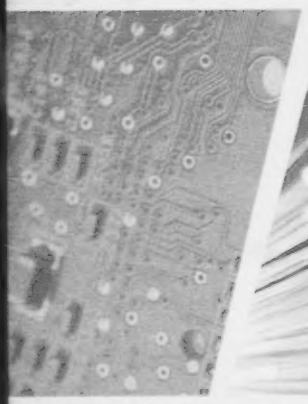
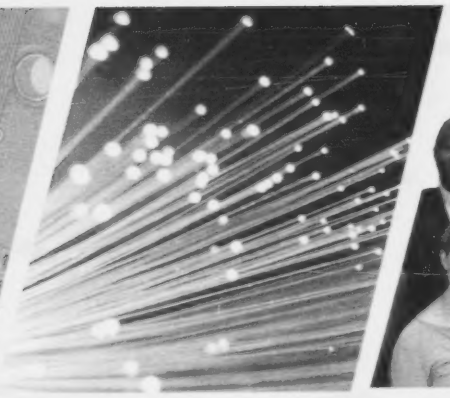
WSIAT 2016
ANNUAL REPORT

LOOKING TO THE FUTURE

Ontario

Workplace Safety and Insurance
Appeals Tribunal

Tribunal d'appel de la sécurité professionnelle
et de l'assurance contre les accidents du travail

WSIAT 2016
ANNUAL REPORT

Workplace Safety and Insurance Appeals Tribunal
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INTRODUCTION

The Workplace Safety and Insurance Appeals Tribunal (WSIAT or Tribunal) considers appeals from final decisions of the Workplace Safety and Insurance Board (WSIB or the Board) under the *Workplace Safety and Insurance Act, 1997* (WSIA).

The WSIA, replacing the *Workers' Compensation Act*, came into force January 1, 1998. The Tribunal is a separate and independent adjudicative institution. It was formerly known as the Workers' Compensation Appeals Tribunal, until the name was changed pursuant to section 173 of the WSIA.

This volume contains the Tribunal's Annual Report to the Minister of Labour and to the Tribunal's various constituencies, together with a Report of the Tribunal Chair. It is primarily a report on the Tribunal's operations for fiscal year 2016 and comments on some matters which may be of special interest or concern to the Minister or the Tribunal's constituencies.

The Tribunal Report focuses on Tribunal activities, financial affairs and the evolving administrative policies and practices.

CHAIR'S REPORT

MESSAGE FROM THE CHAIR

It is my pleasure to provide my first Annual Report as Tribunal Chair for the year ended December 31, 2016. I was appointed on September 6, 2016. While Chair for only a short portion of the reporting period, I am able to comment on my initial observations of the Tribunal and the challenge we face.

David N. Corbett
Tribunal Chair

Within a short time I came to appreciate the thoughtful, careful and effective systems that have been put in place over the years. Of course systems, while important, are only one component of ensuring that people are treated with respect and fairness. What really hit home to me was the unrelenting passion to provide justice to all those who appear before us. Much credit must be given to the Tribunal's two previous Chairs (Ron Ellis and Ian Strachan) along with our Vice-Chairs, Members and staff for establishing and maintaining this culture.

Let me deal directly with the challenge the Tribunal faces.

This challenge has been noted in our last four Annual Reports and is well known by all of our stakeholders. At this time (indeed for the past several years), we have not been providing hearings within a reasonable time period. There are simply too many active cases to deal with, given our current complement of people and our way of processing cases. The Tribunal faced a similar challenge a number of years ago. The Tribunal successfully dealt with that challenge.

Ideally, we will reduce the active inventory from the 8,156 cases we had at December 31, 2016 (down from 9,435 as at December 31, 2015) to about 4,750. We hope to achieve that reduction by December 31, 2019. With an active inventory of about 4,750 cases, the time to first hearing, from the date the case is confirmed as ready to proceed to hearing, should be in the six to eight months range.

What steps were taken in 2016 to reduce the case inventory and what are our plans for 2017?

First, during 2016 we increased our complement of Vice-Chairs. At the beginning of the year we had 53 Vice-Chairs. On December 31, 2016, we had increased our complement of Vice-Chairs to 67. Our goal is to increase the number of Vice-Chairs to 80 by December 31, 2017. In 2017 we will also be increasing the complement of Members and staff who are so vitally essential to the work we do.

With our larger complement, we have been able to increase the number of hearings we hold each month and we will continue to do so during the course of 2017. In early 2016 we held about 260 hearings each month. By the fall of 2017 this number will increase to about 360 hearings per month, a 39% increase from what we were doing in early 2016.

Secondly, in November we began thinking about early intervention strategies that could provide expeditious resolutions in certain cases. By late November we began a trial project which has provided some early success. We will continue to refine the project and evaluate its potential for broadly based implementation and long-term success. I look forward to discussing this initiative with our stakeholders in the coming months.

> *"...I believe we are on the right track. I am optimistic not only because of the initiatives that we have and will take, but because we have such a dedicated, focused and talented group of people at the Tribunal."*

Thirdly, we have commenced a trial Video Hearing Conference project. We know that there are a number of people who appear before the Tribunal who have difficulty travelling to Toronto or the various locations where we hold regional hearings. Not only is the travel difficult for some who appear before us, it is also not always an efficient use of our limited Vice-Chair and Member resources.

We recently held our first trial Video Conference Hearing on a voluntary basis. As expected, we had a few "technical glitches." Nevertheless, the trial was an overall success. There will be further voluntary trials over the course of the next few months. If our experience is good, we will make more extensive use of this method of holding oral hearings.

Fourthly, we have commenced a complete review of our practices and procedures. We will complete the review during the course of 2017. Our goal is to ensure that, while continuing

to deliver exemplary natural justice and issuing rigorously written decisions, the Tribunal operates as efficiently as we possibly can while using the best technology available to us. Where there is conflict in these sometimes competing objectives, we will always choose to proceed in a manner that delivers justice.

In addition to these four initiatives, in 2017 we will be exploring:

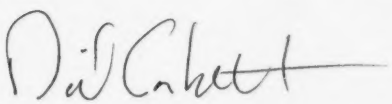
- a renewed focus on mediation
- additional proactive case management
- stakeholder and peer review of Vice-Chairs and Members
- better use of electronic transmittal of files from the Board and use of electronic case files
- better co-ordination with the Board in the implementation of Tribunal decisions.

While there is much to be done to reduce the case inventory (thereby reducing the wait times), I believe we are on the right track. I am optimistic not only because of the initiatives that we have and will take, but because we have such a dedicated, focused and talented group of people at the Tribunal.

I commend your review of the balance of this Annual Report as it provides a wonderful summary of the Tribunal's activities and significant decisions during 2016. While 2016 was busy and challenging, it was a rewarding year for the Tribunal.

In 2017 there will be many formal and informal opportunities for you to raise matters with me. As well, do not hesitate to contact me directly at any time.

I look forward to working with you in 2017.



David N. Corbett
Chair, Workplace Safety and Insurance Appeals Tribunal

HIGHLIGHTS OF THE 2016 CASES

This section reviews some of the many legal, factual and medical issues which the Tribunal considered in 2016.

The Tribunal decides cases under four Acts. The *Workplace Safety and Insurance Act, 1997* (WSIA) came into force on January 1, 1998. It establishes a system of workplace insurance for accidents occurring after 1997, and continues the pre-1985, pre-1989 and pre-1997 *Workers' Compensation Acts* for prior injuries. The WSIA and the pre-1997 Acts have been amended a number of times since 1998. In addition, the Tribunal considers and applies policies adopted by the Workplace Safety and Insurance Board. The substantive provisions and terminology contained in Board policies vary over time. This section uses the policy terms considered in the Tribunal decisions discussed.

Appeals Under the WSIA

The WSIA provides for loss of earnings (LOE) benefits for workplace injury and non-economic loss (NEL) benefits for permanent impairment (PI). The amount of LOE benefits depends on the extent to which the worker can return to the workplace and approximate pre-injury earnings. There are statutory provisions setting out worker and employer obligations to co-operate in early and safe return to work (ESRTW) and worker obligations to co-operate with labour market re-entry (LMR) services (now work transition (WT) services). The WSIA also creates a re-employment obligation where workers have been continuously employed for one year. LOE benefits are reviewable on "material change in circumstances," or annually at the Board's discretion, for 72-months following the accident. When the WSIA was initially enacted, LOE benefits could not generally be reviewed after 72-months; however, subsequent amendments in 2002 and 2007 allow for review in a number of circumstances.

730/15

LOE appeals represent a large portion of the Tribunal's caseload. ESRTW and LMR/WT issues often arise in LOE appeals, since full LOE benefits are payable while a worker is co-operating in ESRTW and LMR/WT services. In *Decision No. 730/15*, 2016 ONWSIAT 39, the worker was unable to continue with his LMR program because he was totally disabled due to multiple conditions, including subsequent non-compensable conditions and non-compensable pre-existing conditions that subsequently deteriorated. *Decision No. 730/15* distinguished between the need for an LMR program to accommodate non-compensable conditions and entitlement to LOE benefits. When post-accident deterioration of non-compensable conditions precludes any LMR plan, the worker is not entitled to full LOE benefits, but benefits based on a suitable occupation for the compensable condition.

The 2002 and 2007 amendments authorize the Board to defer the final LOE review in various circumstances, for example: if the worker is provided with an LMR plan which is not completed when the 72-month period expires; or the worker and employer are co-operating in ESRTW, or the worker is co-operating in health care measures, when the 72-month period expires. Since the review date may affect benefits, a number of appeals have considered whether the 72-month review should have been deferred. *Decision No. 707/15*, 2016 ONWSIAT 356, found that there were no grounds to defer the review for ongoing health care when the worker was receiving multiple medications and attending a pain clinic for maintenance treatment, but there was no specific medical rehabilitation program. Given the unpredictable nature of the worker's condition, she was entitled to full LOE benefits at the final review. Similarly, *Decision No. 1631/16*, 2016 ONWSIAT 1822, found that the review should not have been deferred when there was no work transition plan or assessment arranged or in progress at the review date. LOE benefits should not have been reduced by the CPP disability benefits received after the 72-month period. *Decision No. 974/16*, 2016 ONWSIAT 1957, however, found that review was properly deferred when an LMR process was underway before the final LOE review date, although a formal LMR plan did not yet exist. Gathering information to formulate an LMR plan is part of the plan. The worker could not withdraw from the LMR process on the eve of the final review and claim that the process was terminated or that there was no plan.

While the 2002 and 2007 amendments provide greater flexibility in review, there are still a number of limitations. In deciding whether review is permitted when the employer and worker are co-operating in ESRTW, the Tribunal has found that the ESRTW phase does not end simply by the passage of time but comes to its natural conclusion when return to work is not possible. See *Decisions No. 1869/13*, 2016 ONWSIAT 52, *1649/15*, 2015 ONWSIAT 2878, and *1749/16*, 2016 ONWSIAT 2252. *Decision No. 2786/15*, 2016 ONWSIAT 822, agreed with this analysis, but held this exception is still subject to the time limit in section 44(2.4.4) that review occur within 24 months after the expiry of the 72-months. There was no jurisdiction to review final LOE benefits when the period was more than 24 months later.

The WSIA review provisions also apply to review of future economic loss (FEL) benefits under the pre-1997 Act. *Decision No. 70/16*, 2016 ONWSIAT 1105, is of interest for its analysis of the review provisions applicable to a 1991 right shoulder injury which deteriorated in 2010.

As noted in prior Annual Reports, NEL appeals often require the Tribunal to interpret the complicated American Medical Association *Guides to the Evaluation of Permanent Impairment* (3rd edition revised)

(AMA Guides), which is prescribed as the NEL rating schedule by Ontario Regulation 175/98. See, for example, *Decision No. 1232/16*, 2016 ONWSIAT 1288, which provides a detailed consideration of a thumb and wrist injury, including ratings for loss of motion and a nerve disorder, and a discussion of when hand strength should be rated separately.

2549/15

In some cases, the order of rating under the Combined Values Chart in the AMA Guides may affect the amount of the NEL award. *Decision No. 2549/15*, 2016 ONWSIAT 447, accepted the worker's submission that NEL ratings should be combined in the order they reached MMR, rather than the order they were recognized at the Board. This best reflected the intent of Board policy and the rationale underlying the Combined Values Chart. Rating in this order increased the NEL award from 55% to 60%, a significant increase as additional benefits for severe impairment became available.

107/16
2532/16

Another issue which frequently complicates NEL appeals is the need to consider pre-existing impairments and conditions. Appeals under the new Board policy on pre-existing conditions have not yet reached the Tribunal. Older Board policy distinguishes between symptomatic pre-existing impairments and asymptomatic pre-existing conditions. NEL awards have been increased when they were apportioned for asymptomatic pre-existing conditions. See, for example, *Decision No. 107/16*, 2016 ONWSIAT 407. NEL awards have also been increased when reduction for the pre-existing impairment was not sufficiently focused and included areas which were not prior impairments. See *Decision No. 2532/16*, 2016 ONWSIAT 2803.

2722/15

Decision No. 2722/15, 2016 ONWSIAT 288, considered apportionment of a NEL award for a surgically treated low back when the worker had prior non-compensable back surgery. Board policy effectively requires a hypothetical exercise about what the NEL rating would have been if the prior measureable impairment were compensable. The non-compensable surgery was extremely successful and the NEL rating should not have been reduced so significantly. The rating for the compensable surgically treated disc was also increased by 2% as it was a second operation. The Tribunal did not interpret the AMA Guides as requiring both surgeries to arise from the same accident.

1992/15
588/16

Board policy on assessing permanent impairment due to mental and behavioural disorders provides a rating schedule for both chronic pain and psychotraumatic disability. A chronic pain award is holistic and considers all aspects of a worker's disability, while a psychotraumatic award recognizes the additional impairment caused by a psychiatric diagnosis. In *Decision No. 1992/15*, 2015 ONWSIAT 2478, the worker had a significant organic NEL award, creating the possibility of overcompensation from a psychotraumatic NEL award. To complement the organic award, the psychotraumatic award should generally not

include any significant element attributable to the organic condition. The worker was having difficulties with many activities but these were largely due to the organic condition and had already been rated. The psychotraumatic rating should only consider the additional impairment caused by psychological factors, such as panic attacks and noise intolerance. For a similar analysis of overcompensation when a worker with NEL award for a respiratory condition sought an additional NEL award for pleural plaques, see *Decision No. 588/16*, 2016 ONWSIAT 800.

1073/16
1955/10

Although the AMA Guides are not generally used in rating pensions or permanent disability (PD) awards under the earlier Acts, they may be of assistance when a condition is not listed in the Ontario Rating Schedule. See *Decision No. 1073/16*, 2016 ONWSIAT 1229, for rating of a hernia pension and *Decision No. 1955/10*, 2016 ONWSIAT 201, for a vascular disability pension.

1233/03

Section 13(4) and (5) of the WSIA limits entitlement to mental stress that is "an acute reaction" to a sudden and unexpected traumatic event. Entitlement for mental stress caused by the employer's decisions related to employment is expressly excluded. Since these limits are not retroactive, *Decision No. 1233/03*, 2016 ONWSIAT 2430, held that the correct test for appeals under the earlier Acts continues to be whether the workplace stressors made a significant contribution to the worker's psychological condition. It is still necessary to consider whether the alleged stressor was objectively traumatic, since if it were only traumatic from the worker's perspective, there would not be any injury process external to the worker.

665/10
119/1612

Previous Annual Reports have noted that section 13(4) and (5) and the Board's traumatic mental stress policy have been challenged under the *Canadian Charter of Rights and Freedoms*. In 2016, the third substantive Charter ruling issued. *Decision No. 665/10*, 2016 ONWSIAT 997, agreed with *Decisions No. 2157/09*, 2014 ONWSIAT 938, and *1945/10*, 2015 ONWSIAT 223, that section 13(4) and (5) creates a distinction based on mental disability which is substantively discriminatory and not justified under section 1 of the Charter as a reasonable limit in a free and democratic society. *Decision No. 665/10*, like *Decisions No. 2157/09* and *1945/10*, made no finding with respect to the provision regarding employer decisions related to employment. A Charter challenge has also been raised in *Decision No. 119/1612*, 2016 ONWSIAT 2783, and the worker has provided notice of constitutional question.

2334/15
177/16

Since the Tribunal cannot make general declarations of invalidity, *Decision No. 2334/15*, 2015 ONWSIAT 2738, held that section 13(4) and (5) must be applied when there was no notice of constitutional question.

Recent caselaw indicates that the standard of the average worker in the general labour

pool applies in determining whether an event is traumatic and the worker's usual duties are considered in deciding whether an event is unexpected. And see *Decision No. 177/16*, 2016 ONWSIAT 250.

Amendments effective April 6, 2016, create an exception to the mental stress provisions for post-traumatic stress disorder (PTSD) in first responders. Section 14 provides that workers in specified positions (e.g., firefighters, police officers, paramedics) diagnosed with PTSD are entitled to benefits as if PTSD were a personal injury and the PTSD is presumed to have arisen out of and in the course of employment unless the contrary is shown. Section 14 contains various transitional provisions including section 14(14) which states that claims pending before the Tribunal on April 6, 2016, shall be referred back to the Board for decision in accordance with section 14. *Decision No. 1064/12*, 2016 ONWSIAT 1922, found that section 14(14) removes the Tribunal's jurisdiction to consider a pending appeal involving a paramedic diagnosed with PTSD. The employer could raise any objections, including whether PTSD was the correct diagnosis, with the Board.

Board Policy Under the WSIA

While the Tribunal has always considered Board policy, section 126(1) of the WSIA expressly states that, if there is an applicable Board policy, the Tribunal shall apply it in making its decision. Section 126(2) provides that the Board is to notify the Tribunal of the applicable policy. Section 126(4) sets out a process for the Tribunal to refer a policy back to the Board if the Tribunal concludes that the policy is inapplicable, unauthorized or inconsistent with the Act. Under section 126(8), the Board is then to issue a written decision with reasons. While section 126(4) referrals are rare, policy issues may arise in other circumstances; for example, it may be necessary for the Tribunal to interpret a Board policy or to decide which version of a policy applies, or the Board might ask the Tribunal to reconsider a decision in light of the Board's policy.

As noted in the 2015 Annual Report, a section 126 argument respecting the fatal claim premium adjustment policy was raised in *Decision No. 2346/1212*, 2015 ONWSIAT 646. The Panel asked the Board for submissions and directed that a Charter challenge to the policy would be heard if necessary, after determination of the non-Charter issues. In 2016, the majority of the Panel in *Decision No. 2346/1214*, 2016 ONWSIAT 1427, concluded that the fatal claim premium adjustment policy was not authorized by WSIA, section 82. This section provides that the Board may increase or decrease premiums in such circumstances as the Board considers appropriate, including: where the employer has not taken sufficient precautions to prevent accidents; the employer's accident record has been consistently good; the employer has complied with regulations under the WSIA or *Occupational Health and Safety Act*; and the frequency of injuries and accidents costs are consistently higher than average for the industry. While the majority agreed with the Board that premiums need not be based on private insurance principles that create a strong correlation between premium and risk, the

policy created an unintended result under section 82, as employers with consistently good records face premium increases for one accident, whereas employers who do not qualify for experience rebates do not face increases. Section 82 is intended to apply to an employer's general circumstances, not single incidents. References to the merits and justice did not save the policy since they could not be used to vary the stated intention of the policy. *Decision No. 2346/12I4* referred the policy to the Board for review under section 126(4). The dissent would have upheld the policy and the use of the merits and justice in administering the policy.

657/15

Decision No. 657/15, 2016 ONWSIAT 2124, considered an appeal for a cost transfer of a 2010 motor vehicle accident which had been denied because the accident occurred in the United States. The Board's policy on third party motor vehicle claims costs provides for relief of certain claims involving third party negligence. Policy amendments in 2015 referred to the implementation of no-fault automobile insurance and to third party motor vehicle collisions in Ontario. While the Board submitted that the amendment clarified its previous policy, *Decision No. 657/15* found on the evidence that in 2010 the Board still considered cost transfer when workers of Schedule 1 employers were involved in motor vehicle accidents outside Ontario. This was consistent with the plain reading of the policy in effect at the time of the accident. The employer was entitled to have the costs removed from its record since the accident was entirely the fault of the other driver.

1475/15

While section 126 only requires the Tribunal to apply Board policy, the Tribunal may also consider informal Board practice and Adjudicative Advice documents if they provide useful guidance. *Decision No. 1475/15*, 2016 ONWSIAT 3, considered whether a shoulder injury requiring an acromioplasty should be rated under the AMA Guides or the Adjudicative Advice document. *Decision No. 1475/15* agreed with *Decision No. 2476/09*, 2010 ONWSIAT 1678, that Table 19 of the AMA Guides, when read in context, only refers to the glenohumeral joint. The Tribunal upheld the use of the Adjudicative Advice document for the acromioclavicular joint.

Right to Sue Applications

The WSIA and earlier Acts are based on the "historic trade-off" in which workers gave up their right to sue in exchange for statutory no-fault benefits. The Tribunal has exclusive jurisdiction to decide whether a worker's right to sue has been removed. Right to sue applications may raise complicated issues, such as the interaction between the WSIA and other statutory schemes in Ontario and other jurisdictions.

923/15
194/16

When a statement of claim includes claims which overlap with workplace safety and insurance issues, the Tribunal must determine which matters are within the scope of the Act and which are independent actions.

In *Decision No. 923/15*, 2016 ONWSIAT 644, the worker was injured on a construction site in the course of employment and the statement of claim included claims for negligent misrepresentation by a subcontractor who allegedly tried to prevent the plaintiff from filing a claim with the Board. *Decision No. 923/15* applied *Krishnan v. Kelseys International Inc.*, 2008 ONCA 658, in finding that negligent misrepresentation about how to claim compensation is an independent tort. In *Decision No. 194/16*, 2016 ONWSIAT 797, the worker brought an action against her employer and a co-worker for damages for wrongful termination, sexual assault and vicarious liability. She also sought damages against the employer for post-incident conduct and filed a complaint with the Ontario Human Rights Tribunal. The parties agreed that the action based on negligence was removed and the Tribunal did not have jurisdiction to consider post-incident conduct. The claim regarding vicarious liability was taken away. Tribunal and Court decisions indicate that the right of action is taken away unless the employer's actions are criminal in nature such that the employer removed itself from the scope of the WSIA. There was no such claim in this case. *Decision No. 194/16* followed the preponderance of Tribunal decisions in ruling that the action for wrongful dismissal was not taken away. The right to bring a human rights complaint was also not removed. The Tribunal only has jurisdiction to consider an application by a "party to an action." "Action" has been repeatedly interpreted as a court proceeding. In addition, there are different remedies under the Code and the WSIA.

Employer Issues

Appeals involving employer issues, such as classifications, transfers of cost, adjustments of experience rating accounts and applications for Second Injury and Enhancement Fund (SIEF) relief, continue to form a significant part of the Tribunal's caseload in 2016.

359/14
571/15

Several cases considered appeals for cost transfers under section 84 where the injury is caused by the negligence of another Schedule 1 employer. Policy provides that negligence is failing to do something which a reasonable and prudent person would do, or doing something which a reasonable and prudent person would not do. *Decision No. 359/14*, 2016 ONWSIAT 1536, considered a motor vehicle accident in which a worker died after striking logs that had fallen from a logging truck. The driver had not secured the load until he had driven six kilometres on a very rough road in slippery conditions. The cost transfer was allowed, as failure to follow the standard practice of securing the load before driving away from the loading dock contributed significantly to the accident. *Decision No. 571/15*, 2015 ONWSIAT 2513, also allowed a cost transfer when a worker was struck by steel tubing after a strap being used to lift a bundle of tubing broke. The company was convicted under the *Occupational Health and Safety Act* of failing to acquaint the forklift driver with a hazard in the work of handling and transporting steel tubing. This failure amounted to negligence. There was also negligence in using a strap which was not intended for lifting.

1283/16

Section 21 requires an employer to notify the Board within three days after learning of an accident, and provides for a late filing penalty. *Decision No. 1283/16*, 2016 ONWSIAT 1390, considered whether the employer is obliged to file a Form 7 when it believes that an accident has not occurred and this view is upheld by the Board. *Decision No. 1283/16* noted that the Board relies on self-reporting by both workers and employers. Adjudication depends on receiving timely information. Reporting requirements should be interpreted liberally to apply to alleged workplace accidents, in order to encourage reporting of all work-related accidents and disablements whether they are obviously, or more tenuously, work-related.

2097/16

Decision No. 2097/16, 2016 ONWSIAT 2486, is one of the first decisions to consider an appeal of NEER surcharges imposed when an employer shuts down manufacturing in Ontario. The employer argued that, while it had had a detailed return-to-work program before the shutdown, modified work was no longer available. It asked the Board to exercise its discretion to refund the surcharges, referring to the NEER Plan, section 11.04, which states that, where an employer business is reorganized or the business of an employer is discontinued or resumed, the Board has discretion to determine the proper application of the NEER Plan in accordance with the Plan's intent and purpose. Section 2.01 states that the objectives are reducing the frequency of workplace injuries, the severity of impairments, and the disabling consequences of impairments. *Decision No. 2097/16* agreed with the employer that the Board has discretion in the application of the Plan; however, the surcharges were properly assessed. The employer made a business decision to close its manufacturing facility and would have weighed the costs and benefits of the move. One of the costs was the NEER surcharge. The employer had also delayed in seeking the NEER adjustment. The unexplained delay, regarding a significant amount of money, would be difficult for the other employers in the rate group and for the system generally.

Occupational Disease

Occupational disease cases, which involve workplace exposure to harmful processes or substances, raise some of the most complicated legal, medical and factual issues. Occupational diseases are compensable if they fall under the statutory definition of "occupational disease" or "disablement." The WSIA contains various rebuttable and irrebuttable presumptions for specified occupational diseases and exposures, and the Board has adopted policy on other diseases and exposures. There are also Adjudicative Advice documents which apply to other occupational diseases.

2692/15

Section 134 allows the Tribunal to "establish a list of health professionals upon whom the tribunal may call for assistance in determining matters of fact in a proceeding." Medical Assessors are often asked for opinions in cases which are not covered by statutory presumptions or policy. *Decision No. 2692/15*, 2015 ONWSIAT 3004, discussed the factors to weigh in directing

further investigation, including: the novelty of the issue; the extent to which the condition is novel or controversial; whether there are divergent medical opinions; whether the diagnosis is unclear; the quantity and quality of opinions on file; the likelihood of the assessor being in a better position to provide an opinion; and whether the Medical Liaison Office has recommended an assessment.

A number of Tribunal decisions considered the recent Supreme Court of Canada decision, *British Columbia (Worker's Compensation Appeal Tribunal) v. Fraser Health Authority*, 2016 SCC 25, on the standard of proof in workplace insurance disputes, particularly occupational disease cases. The Tribunal's approach is consistent with the analysis of *Fraser Health Authority* that scientific certainty is too high an onus of proof and that *Snell v. Farrell* (1990), 27 DLR (4th) 289 (S.C.C.) is authority for a fact finder to draw common sense inferences of causation in the absence of scientific proof. See *Decision No. 1173/16*, 2016 ONWSIAT 1873, regarding hearing loss and *Decisions No. 913/05*, 2016 ONWSIAT 2692, *914/05*, 2016 ONWSIAT 2708, *915/05*, 2016 ONWSIAT 2704, *916/05*, 2016 ONWSIAT 2712, *917/05*, 2016 ONWSIAT 2668, *918/05*, 2016 ONWSIAT 2686, and *919/05*, 2016 ONWSIAT 891, involving firefighters and various cancers and diseases, discussed below.

Decisions were released in a batch of eight appeals involving firefighters who had developed cancer or other illness after attending a fire in 1987. *Decision No. 919/05*, which was part of the original batch, was referred back to the Board pursuant to January 1, 2016 amendments to Ontario Regulation 253/07 which provide that the presumption in section 15.1(4) of the WSIA now applies to primary site lung cancer and the Tribunal shall refer pending appeals back to the Board to decide in accordance with section 15.1.

The remaining firefighter appeals, *Decisions No. 913/05, 914/05, 915/05, 916/05, 917/05* and *918/05*, are of particular interest for their discussion of cluster evidence. A Medical Assessor opined that apparent excess cancer may be consistent with cancer's expected random variability. Clusters usually consist of the same type of cancer. When there are multiple types, occupational cause is less likely. Only primary cancers are used to investigate a cluster. A number of the appeals did not meet these requirements: there were two non-cancer diagnoses and three cancers of unknown primary site, each with a different cellular type. There remained one liver cancer, one leukemia and two skin cancers. The appeals were denied as the specific evidence did not support causation and there was no common sense basis to disagree with the Medical Assessor on medical issues of latency, compatibility or exclusion from the cluster.

Decision No. 2666/16, 2016 ONWSIAT 2909, is of interest for its consideration of the 2007 amendments creating a presumption for firefighters who sustain a heart injury in prescribed circumstances. The worker was a volunteer firefighter who suffered a fatal heart attack the day after attending a grass fire. The Tribunal rejected an argument that the presumption for heart injury sustained within 24 hours of attending a fire scene did not apply. Board policy requires the presence of combustion or burning material giving rise to smoke or flames. It was sufficient for the burning grass to be still smoking when the worker arrived at the scene.

Other Legal Issues

Charter arguments were considered in a number of 2016 appeals. As noted above, *Decision No. 665/10*, 2016 ONWSIAT 997, allowed a Charter challenge to the mental stress provisions and *Decision No. 119/16I2*, 2016 ONWSIAT 2783, allowed another Charter challenge to those provisions to proceed. *Decision No. 996/16I*, 2016 ONWSIAT 1631, considered the timeliness of a worker's notice of constitutional question. The *Courts of Justice Act*, section 109(2.2), provides that notice should be served as soon as the circumstances requiring it become known and, in any event, at least 15 days before the day on which the question is to be argued. The Tribunal's Practice Direction on *Procedure When Raising a Human Rights or Charter Question*, requires that notice be served as soon as the circumstances requiring it become known and parties must comply with section 109 of the *Courts of Justice Act*; the Charter question is only addressed if necessary after the other issues are decided; and the Tribunal may consider other procedural methods when circumstances require. The worker gave notice to the Attorney General of Ontario approximately four weeks before the hearing and to the Attorney General of Canada within 15 days of the hearing. The employer submitted that both notices were out of time as notice could have been given after release of *Decision No. 2157/09*, 2014 ONWSIAT 938. The worker's notice to the Attorney General of Ontario was proper. It was given at least 15 days prior to the initial hearing, well before any consideration of the Charter issue. The Tribunal exercised its discretion under the Practice Direction with respect to notice to the Attorney General of Canada, and permitted the worker to raise the constitutional question.

The Tribunal often considers the admissibility of video or audio recordings. *Decision No. 2096/14*, 2015 ONWSIAT 2939, is interesting for its discussion of the difference between admissibility and the weight to be given to such evidence. An audio recording of a conversation between the worker and a co-worker, which was made without the co-worker's knowledge, was admissible in accordance with the test set out in *Decision No. 20/95* (April 21, 1995), which considers whether the evidence is relevant, whether it is authentic, and whether there are special circumstances that might warrant exclusion. While the recording was admitted, it was given no weight as it mostly involved the worker making statements to the co-

worker, who responded in a distracted manner with minimal comments.

The doctrine of issue estoppel is frequently considered at the Tribunal. In 2016, *Decision No. 1177/16*, 2016 ONWSIAT 1761, noted that a Tribunal appeal is an appeal *de novo*; however, it is only *de novo* with respect to issues in the particular appeal. The Tribunal may not make findings that are inconsistent with a prior decision only because they technically apply to a later time period. If the findings in a prior decision have ongoing relevance, the Tribunal is bound by them.

The doctrine of equitable estoppel is considered less frequently. In *Decision No. 1639/15*, 2015 ONWSIAT 2638, the worker submitted that the Board had advised her that she would receive full LOE benefits to age 65 and that, based on the doctrine of equitable estoppel, the Board could not offset her CPP disability benefits. *Decision No. 1639/15* agreed with previous decisions that equitable estoppel does not provide authority to grant a remedy not permitted by the Act. The doctrine cannot be used if the effect is to stop a public body from performing its statutory duty or exercising its statutory discretion.

APPLICATIONS FOR JUDICIAL REVIEW AND OTHER PROCEEDINGS

Judicial Review Activity

The Tribunal was successful on all challenges to its decisions on applications for judicial review in 2016.

The Tribunal has compiled an impressive record on judicial review over its 31-year history. The Tribunal has released over 72,000 decisions, but only once has a final decision of a court quashed a Tribunal decision. Dozens of decisions of the courts have stated that the Tribunal is an expert body and its decisions are deserving of deference. The Tribunal's judicial review record is a demonstration of the excellence of the Tribunal's decisions, and the outstanding work of the Tribunal's adjudicators and staff.

Only judicial review applications where there was some significant activity during 2016 have been included in this Annual Report. There are a number of other applications for judicial review not referred to here which have been adjourned for various reasons, and have not been finally concluded.

General Counsel and lawyers from the Tribunal Counsel Office represent the Tribunal in court in most instances, and co-ordinate all responses to judicial review applications and other court applications where outside counsel are used.

1 *Decisions No. 1135/12, 2013 ONWSIAT 1001, and 1135/12R, 2013 ONWSIAT 2674*

The worker was an apprentice at an auto repair shop. He was asked to help his employer deliver a derelict vehicle to a recycling/scrap dealer. The worker steered the vehicle down a public street, while being pushed from behind by his employer's vehicle. Once they arrived at the scrap yard, the worker remained in the derelict vehicle while a bobcat pushed it on to a weigh scale. Due to a failure to communicate, when the bobcat pushed the vehicle off the scale it was immediately crushed by a crane while the worker was still inside. The worker suffered serious injuries.

The worker commenced an action against the scrap yard, and three employees of the scrap yard. These defendants then commenced a third party action against the worker's employer.

The worker received statutory accident benefits (SABs). The insurance company which provided these benefits, and the third parties,

applied to the Tribunal under section 31 of the WSIA for a determination of whether the worker's rights of action was taken away. The only issue was whether the worker and the three workers of the scrap yard were in the course of their employment when the accident occurred.

The Vice-Chair found on the balance of probabilities that both the worker and the defendant's employees were in the course of their employment when the accident happened. The lawsuit brought by the worker was barred by section 28 of the WSIA, and the grounds for the third party action no longer existed. Consequently, the worker was entitled to benefits from the insurance plan.

The worker commenced an application for judicial review, which was heard on April 15, 2015, by the Divisional Court Panel of Justices Lederer, Corbett and Lederman. In a decision released on January 6, 2016, the Divisional Court unanimously dismissed the judicial review. Justice Corbett, writing for the Panel, stated [at paras. 15-17]:

> The question for this court is whether the WSIAT's decision was reasonable.
>
> It was.
>
> ...The Vice-Chair's conclusions... were supported by the overwhelming weight of the evidence. They were reasonable. And there was no procedural unfairness...

2 Decision No. 398/14, 2014 ONWSIAT 514

Both B and P had been hired to work on a construction project at a cottage in a rural area.

They were staying at a nearby motel, which was booked and paid for by their employer. P was paid some monies for mileage by the employer for the use of his car. Both B and P were given a *per diem* for food and for other expenses while working remotely.

While working at the cottage, P drove B to a restaurant, located in the town closest to their worksite, for their lunch break. An accident occurred after lunch, on the way back to the worksite, when P's car went off the road.

B was injured and received statutory accident benefits. The insurer of P's car applied to WSIAT for an order that B's right of action was taken away. The main issue was whether B and P were in the course of employment at the time of accident.

The Vice-Chair characterized the issue as whether B was involved in an activity that was reasonably incidental to employment at the time of the accident. He reviewed WSIB policy and noted that, although the general rule was that a person is not in the course of employment after leaving the worksite, there was an exception for workers travelling on their employer's business and who must stay overnight at a motel paid for by their employer.

Further, although a worker is often not in the course of employment during a lunch break, Tribunal decisions have taken a broader approach to what is reasonably incidental when travelling workers are staying overnight at accommodations paid for by their employer. Lunch breaks in this situation have been viewed to be reasonably incidental to employment.

The Vice-Chair noted that workers can still take themselves out of the course of employment if they were engaged in a personal activity at the time of the accident that was not connected to their employment. The Vice-Chair found that in this case there was no personal activity other than going to lunch. The workers had eaten at the closest and only restaurant in the area. After lunch, the two workers proceeded directly back towards the worksite.

The Vice-Chair found that B's right of action was taken away.

B commenced an application for judicial review. The judicial review was heard in London on November 21, 2016. The Divisional Court Panel of Justices Thorburn, Tausendfreund and Harper, unanimously dismissed the judicial review.

The Court did not accept the applicant's argument that the Vice-Chair made two factual findings which made his decision unreasonable.

The applicant's main argument was that there was one sentence in the 10-page decision which rendered the decision as a whole unclear and therefore unreasonable. The Court carefully reviewed the decision and found [at para. 36] that the Vice-Chair had "provided a comprehensive review and analysis of the evidence, a review of prior WSIB decisions that held the applicants in those cases had no right to sue on facts similar to those in this case," and that he had concluded the right to sue had been taken away.

Noting the high level of deference accorded to Tribunal decisions, the Court stated [at paras. 38-40]:

> In this context, the decision as to whether a decision is reasonable must be reviewed by considering whether the decision has been justified, is transparent and intelligible and whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law. (*Dunsmuir v. New Brunswick*, [2008] SCC 9, paras 47 and 51).
>
> The decision should be approached as an "organic whole, without a line-by-line treasure hunt for error." (*Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 S.C.R. 708)
>
> This means that the court will only interfere where there is no evidence in support of a finding of fact or if there are no lines of reasoning that would support the decision.

Here the Court found [at para. 42] that, while the Vice-Chair made one finding that was inconsistent with his analysis and conclusion,

"the decision as as whole shows a clear line of reasoning supporting the Vice-Chair's conclusion, and evidence that justifies his conclusion. Moreover, the decision falls within a range of possible, acceptable outcomes which are defensible in respect of both the facts and law."

3 *Decisions No. 493/13*, 2013 ONWSIAT 912, and *493/13R*, 2014 ONWSIAT 2705

In *Decision No. 1309/01*, 2004 ONWSIAT 637, the worker was denied entitlement to a section 147(2) supplement under the pre-1997 Act, but was granted entitlement to section 147(4) supplement.

The worker then appealed from a decision of the WSIB regarding the calculation of the supplement.

In *Decision No. 1387/07*, 2008 ONWSIAT 1384, the Tribunal upheld the decision of the WSIB and determined that the amount of benefits owing under section 147(4) is subject to the Old Age Supplement limit pursuant to section 147(8). The worker's subsequent request for reconsideration of *Decision No. 1387/07* was denied in *Decision No. 1387/07R*, 2008 ONWSIAT 3174. The worker then applied for judicial review of *Decisions No. 1387/07* and *1387/07R*.

The same counsel, representing a different worker, sought judicial review of *Decision No. 1858/08*, 2009 ONWSIAT 25, which involved an identical issue. Counsel had indicated a plan for a class action on section 147(4) supplements if the judicial reviews were successful.

The Divisional Court heard the judicial review applications together in 2010, and dismissed them both [2010 ONSC 1033].

The same worker as in *Decisions No. 1309/01* and *1387/07* appealed a WSIB decision concerning whether her section 147(4) supplementary benefits had been correctly calculated pursuant to section 147(13) at the 24-month and 60-month reviews. The worker claimed this was a different issue than the initial determination of a section 147(4) supplement, which she alleged was all that was decided in the judicial review in 2010.

In *Decision No. 493/13*, the Vice-Chair referred to the Divisional Court's decision. The Vice-Chair held that the intent of section 147(4) was not to provide income replacement, but instead to provide workers who were either unemployable or unable to benefit from vocational rehabilitation services with an additional amount. This additional amount would be calculated according to section 147(9) or (10), and would *not* exceed the Old Age Supplement cap pursuant to subsection (8).

The worker then sought clarification of two issues arising out of *Decision No. 493/13*. First, the worker requested the Tribunal clarify that *Decision No. 941/94* (1997), 41 W.C.A.T.R. 69, dealt with a different issue than the issue before the Vice-Chair in *Decision No. 493/13*. However, the Vice-Chair noted that the review in *Decision No. 941/94* was thorough and had been relied upon in numerous other Tribunal decisions, and declined to grant this request for clarification. The Vice-Chair did clarify *Decision No. 493/13* regarding a reference to the 2010 judicial review, but generally found that the worker was essentially trying to re-argue issues raised and already addressed in *Decision No. 493/13*.

In June 2015, the worker commenced an application for judicial review of *Decisions No. 493/13* and *493/13R*, as well as *Decisions No. 827/13* and *827/13R*, which are discussed below. The worker sought an interlocutory order certifying the judicial reviews as a class proceeding on behalf of all persons whose benefits pursuant to section 147(13) of the *Workers' Compensation Act* have been subjected to a maximum cap pursuant to section 147(8) of the *Workers' Compensation Act*. The parties agreed that the judicial reviews would be determined before any certification motion was considered.

The judicial review of *Decisions No. 493/13, 493/13R, 827/13* and *827/13R*, were heard together in London on November 23, 2016. The Divisional Court Panel of Justices Thorburn, Tausendfreund, and Harper, unanimously dismissed both judicial reviews. The Court found the Tribunal's interpretation of section 147(13) was reasonable.

The Court noted that the reasonableness standard of review requires a contextual approach to deference. Here the question was one of statutory interpretation.

The Court noted statutes are to be interpreted consistently with policy objectives expressed by the legislators. Here the Court cited the statement of the then Minister of Labour when introducing the legislation, which referred to supplementary benefits equal to the *Old Age Security Act* pension benefits. This showed the intention of the legislators was to cap the section 147(4) supplement. The Tribunal's interpretation was consistent with the stated legislative objective.

The Court held that section 147(13) should be considered in the context of section 147 as a whole. Section 147, when read as a whole, suggests that there is a cap on the initial assessment of the supplement, and that any review of the supplement would also be subject to the same limitation.

The Court did not agree with the applicant that the maxim *expressio unius est exclusio alterius* applied to suggest there was no cap on the section 147(13) review. The Court noted [at paras. 47-48] this interpretative tool can be unreliable as it does not take into account context, and may lead to inconsistency or injustice:

> Although section 147(8) is not specifically referred to in section 147(13), it was nonetheless reasonable for the Tribunals to conclude that there was a cap on the amount of the supplement payable to the Applicants as section 147(13) is merely a review and recalculation of the more comprehensive original determination which imposes a cap.

The Tribunal has made written submissions requesting costs. At the end of 2016, the Tribunal was waiting for a decision on costs.

4 *Decisions No. 827/13*, 2013 ONWSIAT 1018, and *827/13R*, 2014 ONWSIAT 2702

In *Decision No. 827/13*, the worker appealed a WSIB decision regarding whether section 147 supplementary benefits had been correctly

calculated at the 24-month and 60-month reviews. The issue in this decision was the same as the issue raised in *Decision No. 493/13*.

The worker submitted that the calculation for each review should not be capped by the Old Age Security limit in section 147(8). The Vice-Chair disagreed with the worker's argument and noted that this argument had been considered and rejected in several previous Tribunal decisions, including *Decision No. 621/12*, 2012 ONWSIAT 1720. The reasons for rejecting the argument were carefully reviewed in *Decision No. 621/12*, and it was determined that section147(8) applies in calculating a worker's benefits on each review of a section 147(4) supplement, as well as on the initial section 147(4) determination. The Vice-Chair agreed with the reasoning in *Decision No. 621/12* and dismissed the worker's appeal.

The worker then sought clarification of *Decision No. 827/13*. The worker's request for clarification was denied as it was determined that the original Vice-Chair had made a thorough and persuasive review of the issue raised in *Decision No. 827/13*.

In June 2015, the worker initiated an application for judicial review of *Decisions No. 827/13* and *827/13R*. As discussed in the preceding section, a different worker also seeks to judicially review *Decisions No. 493/13* and *493/13R*. Both workers also sought an interlocutory order certifying the judicial review as a class proceeding on behalf of all persons whose benefits pursuant to section 147(13) of the *Workers' Compensation Act* have been subjected to a maximum cap pursuant to section 147(8).

This judicial review, as well as the judicial review of *Decisions No. 493/13 and 493/13R* was heard on November 23, 2016. The decision of the Divisional Court which dismissed the judicial review is set out above, under *Decisions No. 493/13* and *493/13R*.

At the end of 2016, the Tribunal was also awaiting the Court's decision on the Tribunal's request for costs.

5 *Decisions No. 1959/14*, 2015 ONWSIAT 1106, and *1959/14R*, 2015 ONWSIAT 2492

A County in Ontario decided to build an overpass bridge on a highway. MI was injured when the bridge collapsed while he was operating a cement smoothing machine on it.

The County had hired BM as consulting engineers and AH as the general contractor. AH hired IB to do the concrete finishing. GBL was a subcontractor. GBL hired EF to supply falsework and formwork. EF hired McG, as its own engineer.

MI sued AH, BM, GBL, the County and McG. MI's wife made a claim under the *Family Law Act*.

EF and McG brought a section 31 application on the grounds that MI could not sue because he was a worker.

At the hearing, MI argued he was not a worker, because he was either an independent operator or an executive officer.

MI and his brother LI testified. At the end of the hearing, after the witnesses had testified, MI's lawyer attempted to submit additional material. The new material was excluded.

After the hearing, MI discharged his lawyer and hired a new lawyer. MI's new lawyer and the lawyer for the section 31 applicants each made post-hearing written submissions.

After the hearing, the Vice-Chair understood that MI had conceded that he was not an independent operator, so the only issue was whether MI was a worker or an executive officer of IB. The Vice-Chair determined that although MI was nominally an officer of the company, the substance of his role showed he was not a directing mind of IB. The Vice-Chair concluded that MI was a worker. As a result, the action of MI and his wife was deemed to be barred.

MI's request for reconsideration was denied. MI argued he had not conceded he was not an independent operator, only that he was not an independent contractor. The Vice-Chair found this was a distinction without a difference. MI also submitted a number of records that had not been produced for the original hearing. The Vice-Chair reviewed the new material in the context of the reconsideration test and found MI had failed to provide substantial new evidence that had not been available at the time of the original hearing that would have likely resulted in a different decision.

MI commenced an application for judicial review. The case was heard on October 20, 2016, before the Divisional Court Panel of Justices Hambly, Dambrot and Mew. MI sought to limit the Tribunal's role at the hearing of the judicial review, and to strike the Tribunal's factum. The Court reserved its decision. At the end of 2016, the judicial review decision was still pending.

6 *Decisions No. 645/11, 2012 ONWSIAT 1343 and 645/11R, 2015 ONWSIAT 629*

Decision No. 645/11 granted the worker entitlement to loss of earnings benefits after July 2004, and to benefits for a psychotraumatic disability.

The worker's claim was returned to the WSIB for implementation. The WSIB implemented the Tribunal's decision by paying the worker full LOE benefits only until October 2006, and then partial LOE benefits until the worker reached age 65 in 2012.

Following the WSIB's implementation, the worker brought an application for a writ of *mandamus* to compel the WSIB to implement *Decision No. 645/11* by granting her full LOE benefits to age 65. The Tribunal was not named as a party in the original judicial review application.

The WSIB then requested clarification and/or reconsideration of *Decision No. 645/11* at the Tribunal. In *Decision No. 645/11R*, a different Vice-Chair considered whether the request for clarification should proceed or whether the clarification request should be put on hold until the worker's court application had resolved. The Vice-Chair determined that the request for clarification should proceed without waiting

for the resolution of the court proceeding. The Vice-Chair noted that proceeding with the request was the quickest and most efficient way of resolving the apparent dispute as to the intent of *Decision No. 645/11* regarding ongoing LOE benefits. Further, the Tribunal was in the best position to understand the nature of the dispute and to provide clarification, which could help avoid unnecessary litigation.

The Vice-Chair clarified *Decision No. 645/11* by stating that the decision granted further LOE benefits to the worker, with the nature and duration of those benefits to be determined by the WSIB. She held *Decision No. 645/11* did not grant full LOE benefits to the worker to age 65.

Following the release of *Decision No. 645/11R*, the worker amended her application for judicial review to add the Tribunal as a party. In addition to seeking a *mandamus* order, the worker also alleged that *Decision No. 645/11R* was unreasonable.

Following discussions with the worker's counsel, the worker agreed to put the judicial review on hold in order to explore appeal options at the WSIB pertaining to the duration of psychotraumatic benefits.

After six months, the worker had not pursued her appeal at the WSIB, and the Tribunal contacted counsel for the worker to ask whether this matter would proceed. Following discussions with the worker's counsel, the worker decided to abandon her judicial review.

7 *Decision No. 2214/13*, 2014 ONWSIAT 615

In 1967, the worker, then employed as a police officer, suffered injuries to his upper body when he was attacked by a prisoner. He left the police force two years later. He then embarked on a career operating garages, working for a truck rental company, and as a millwright.

The worker was involved in a motor vehicle accident in 1973. He also suffered a number of work accidents, including various low back injuries. The WSIB denied ongoing entitlement for the worker's low back, as well as initial entitlement for his neck, shoulders and arms. The worker appealed to the Tribunal.

Due to the date of the 1967 accident, the pre-1985 Act applied to the worker's appeal.

In *Decision No. 2214/13*, released in March 2014, the Panel held the worker did not have ongoing entitlement for the low back or shoulders as a result of the 1967 accident. However, the Panel found the 1967 accident caused a temporary aggravation of a pre-existing back and neck condition.

In April 2014, this worker, now self-represented, filed an application for judicial review of the Tribunal's decision in the Hamilton Divisional Court Office. The Tribunal served a Record of Proceedings. The worker took no steps to advance the judicial review. In 2015, the worker sent a letter stating that he intended to withdraw the judicial

review, but threatened to commence a law suit against the Tribunal Chair. No law suit was ever served by the worker. The worker took no steps to properly abandon his judicial review, despite a request from the Tribunal that he do so.

In April 2016, the Hamilton Divisional Court notified the worker that the judicial review would be dismissed if it was not perfected by April 27, 2016.

In the meantime, the worker was pursuing another appeal at WSIAT on a different issue. This other appeal was dismissed on April 12, 2016, in *Decision No. 2801/15*, 2016 ONWSIAT 958.

As the worker took no steps to perfect his judicial review, on May 9, 2016, the Hamilton Divisional Court issued a notice dismissing the judicial review with costs.

8 *Decisions No. 959/13*, 2013 ONWSIAT 1281, and *959/13R*, 2013 ONWSIAT 2345

The worker's appeals for entitlement to non-economic loss benefits for his low back, and to LOE benefits from August 17, 2010, were denied in *Decision No. 959/13*.

The worker had been a foreman with a paving company. He injured his back at work in April 2009. The Panel found that the worker's compensable condition resolved by the time the WSIB terminated LOE benefits in 2010, as noncompensable factors were responsible for the worker's complaints. Further, the Panel found the worker had been offered suitable work at no wage loss.

The worker's application for reconsideration was denied in *Decision No. 959/13R*. In the reconsideration decision, the same Vice-Chair clarified that there had been no ruling on the worker's potential psychological entitlement, so there was nothing that would preclude the worker from pursuing entitlement at the WSIB pursuant to the chronic pain or psychotraumatic disability policies.

In December 2013, the worker commenced an application for judicial review. Following discussions with the Tribunal, counsel for the worker agreed the judicial review would not proceed until the worker had obtained a ruling on psychological/chronic pain entitlement.

The WSIB denied the worker's appeal on these issues, so the worker appealed to the Tribunal. A different Panel heard this appeal. In *Decision No. 2252/15*, 2016 ONWSIAT 2646, the Tribunal granted the worker entitlement for CPD benefits. The nature and duration of the benefits are to be determined by the WSIB.

Counsel for the worker has been waiting for the Board to implement this decision before abandoning the judicial review.

9 *Decisions No. 2329/10*, 2012 ONWSIAT 1287, *2329/10R*, 2013 ONWSIAT 2690, *2329/10R2*, 2015 ONWSIAT 2695, and *2329/10R3*, 2016 ONWSIAT 1875

The worker, an off-duty paramedic, was injured while assisting a person who had collapsed. The WSIB denied the worker entitlement

on the grounds he was not in the course of employment at the time of the accident.

In *Decision No. 2329/10*, the majority of the Panel allowed the appeal. The worker, while off-duty, assisted other paramedics who were on duty, at their request. The majority found it was when the on-duty paramedics requested the worker's help that he became in the course of employment. The employer member stated in his dissent that the worker was not involved in employment at the time of the accident.

The employer's request for reconsideration was granted by a different Vice-Chair in *Decision No. 2329/10R* on the grounds there had been a breach of procedural fairness. The Vice-Chair found the employer had not been provided with the opportunity to make submissions on the novel theory of work-relatedness which had been adopted by the majority in granting the appeal, and which had not been argued by the worker.

The same Vice-Chair re-heard the appeal. In *Decision No. 2329/10R2*, the Vice-Chair applied the relevant Board policy and found the worker was in the course of employment because the test for time, place and activity had been met. The Vice-Chair found the policy criterion of activity was satisfied because the worker was providing assistance in a medical emergency, which was what his job required, and not engaged in a personal activity when he was injured. The place criterion was satisfied because, like the paramedics he assisted, the location for a paramedic is never fixed.

The time criterion was the most challenging aspect, because, although the prevailing culture was for paramedics to render assistance when off-duty, the worker was not legally required to do so. The Vice-Chair found it was significant that the worker followed the employer's policy about not using the defibrillator while off duty, which demonstrated he was acting pursuant to the employer's direction at the time of the accident. Here, the worker's assistance to the other paramedics in the emergency medical situation, drawing on his professional skill and training, provided a benefit to the employer.

The employer commenced an application for judicial review. A simultaneous WSIB request that the Tribunal clarify *Decision No. 2329/10R2* because of an alleged typographical error was denied in *Decision No. 2329/10R3*.

The applicant is expected to serve its factum in early January 2017.

10 *Decision No. 88/16*, 2016 ONWSIAT 1188

The worker had a compensable shoulder injury in 2008. He returned to work in a modified job for five months but, in May 2009, he was laid off for noncompensable reasons.

The Board determined the worker's employability had been affected by the accident, and granted LOE benefits and an LMR assessment. However the worker contacted the Board in June 2009 to advise that he was absent for noncompensable reasons and

did not want these benefits. Accordingly, the Board rescinded the worker's benefits at that time.

In November 2009, the worker had surgery on his shoulder. The Board granted LOE benefits in September 2010, as well as LMR services. He was granted a 10% NEL award in 2011.

The employer objected to these LOE benefits and LMR services on the grounds the worker had voluntarily resigned and therefore should not be entitled to further benefits.

The worker decided not to participate in the employer's appeal. The Panel did not agree that a negative inference should be drawn from the worker's nonparticipation, as the employer did not ask to summons the worker or to adjourn the hearing.

The Panel noted that, where a worker voluntarily ceases suitable employment, he loses entitlement to benefits because his loss of earnings no longer results from the injury. However, here the Panel found the worker was involuntarily laid off. The Panel also found there was no suitable modified work available at the time the worker was laid off. Accordingly, the Panel found the worker was entitled to LMR services and LOE benefits after his lay-off, and after his surgery.

In August 2016, the employer commenced an application for judicial review. Counsel for the employer is expected to file his factum by the end of January 2017.

11 *Decisions No. 1791/07, 2007 ONWSIAT 2212, 1791/07R, 2008 ONWSIAT 634, 1791/07R2, 2009 ONWSIAT 2214, and a decision letter dated December 5, 2016*

The worker's appeal for entitlement for carpal tunnel syndrome, entitlement for a psychotraumatic award, and an increase to his 45% NEL award was denied in *Decision No. 1791/07*. His request for reconsideration was denied in *Decision No. 1791/07R*.

The worker commenced an application for judicial review. His judicial review was adjourned while he pursued a further reconsideration. This second reconsideration request was denied in *Decision No. 1791/07R2*.

The worker then proceeded with his application for judicial review. The Divisional Court unanimously dismissed the judicial review in June 2010 [2010 ONSC 3580].

The worker did not seek leave to appeal the Divisional Court decision for over eight months. His request for a time extension was denied by Karakatsanis JA (as she then was) on March 30, 2011. His request for a further time extension to review the decision of Karakatsanis JA was dismissed by Laskin JA on July 12, 2012. The worker's appeal

of Laskin JA's decision was dismissed by Armstrong, MacPherson and Blair JJA on September 26, 2012. The worker's leave to appeal application to the Supreme Court of Canada was dismissed by Justices Fish, Rothstein and Moldaver, on February 28, 2013. The worker's request for the Supreme Court to reconsider its decision was denied on August 6, 2013.

On April 27, 2016, the worker made a new request for reconsideration to the Tribunal. In a letter dated December 5, 2016, the Tribunal Chair dismissed the request for reconsideration. On December 20, 2016, the worker commenced an application for judicial review. At the end of the year the Tribunal was in the process of preparing its Record of Proceedings.

12 *Decision No. 841/16*, 2016 ONWSIAT 1432

The worker was a bus driver. He stopped work in November 2011, due to stress and depression. He received sick benefits until he retired in January 2012. In September 2012, the worker made a claim to the Board for initial entitlement for traumatic mental stress, which he related to stressful incidents which had occurred on the job. The Board denied his appeal. The worker appealed to the Tribunal.

The Tribunal Panel which heard his appeal also denied the worker entitlement to traumatic mental stress. The Panel did not accept the worker was entitled to traumatic mental stress on a cumulative basis. The Panel found the worker's psychological condition was caused by personal life stressors, rather than workplace stress. The Panel also found the worker did not have an acute reaction to the workplace incidents, and that the culminating event in his stress was a disciplinary action by the employer, for which the worker was not entitled to benefits for stress under the Act. The worker, who is self-represented, commenced an application for judicial review. The Tribunal and the worker were engaged in discussions about the worker's pleadings when the worker decided to request a reconsideration of *Decision No. 841/16* instead. The worker has advised that he will not proceed with his judicial review until he receives a decision on his reconsideration request.

13 *Decision No. 797/14*, 2014 ONWSIAT 1658

The worker sustained a compensable injury to his low back in September 1986. In October 1988, the worker was awarded a 10% permanent disability pension. In June 2006, the worker's pension award was increased from 10% to 15% between October 1988 and August 2001, and then to 20% as of August 2001. The 20% pension award was upheld in a January 2013 decision of an Appeals Resolution Officer. The worker appealed this decision to the Tribunal. After a written hearing, the Vice-Chair denied the worker's appeal in *Decision No. 797/14*.

In March 2015, the worker commenced an application for judicial review. However, following discussions with counsel for the worker, it was agreed the judicial review would be held in abeyance until March 2017, without

the need for the Tribunal to file a factum, while the worker returned to the WSIB for a decision on benefits for a different period of time.

Other Legal Matters

Action in Superior Court, *Decisions No. 691/05*, 2008 ONWSIAT 402 and *691/05R*, 2013 ONWSIAT 1292

Following four days of hearing, the Panel allowed this self-represented worker's appeal in part. The worker was granted initial entitlement to benefits for his neck, and for various periods of temporary partial disability benefits. He was denied initial entitlement for an injury to his upper and mid-back, for a permanent impairment for his upper, mid-back and neck, for labour market re-entry, and for reimbursement of travel expenses. The WSIB's determination of the worker's future economic loss and his suitable employment or business was found to be correct.

Three days prior to the release of *Decision No. 691/05*, the worker wrote to the Tribunal alleging he had been threatened by one of the Panel members. Although the Tribunal informed the worker about the appropriate complaint procedures, no response was received from the worker for two and a half years. In September 2010, the worker made further allegations of Panel misconduct, and requested a reconsideration. The reconsideration was denied by a different Vice-Chair in *Decision No. 691/05R*, which was released in June 2013.

In July 2013, the Tribunal and the WSIB were served with a Notice of Application, issued out of the Superior Court of Justice, asking that *Decisions No. 691/05* and *691/05R* be set aside. The Tribunal wrote to the worker to advise that he had commenced proceedings in the wrong court.

The worker abandoned his action in August 2013.

In February 2014, the worker commenced a new action against the WSIB and the Tribunal, this time claiming relief of over $6,000,000. Much of the worker's claim contains allegations against the WSIB, but his claim also takes issue with the Tribunal's decisions, alleging errors and bad faith. The worker again made allegations against one of the Panel members.

The Tribunal and the WSIB each brought a motion to dismiss the worker's action. The motion was heard on August 15, 2016. The Court reserved its decision. At the end of 2016, the Tribunal was waiting for the Court's decision.

Action in Superior Court, *Decisions No. 531/12*, 2015 ONWSIAT 553, and *531/12R*, 2016 ONWSIAT 3426

In *Decision No. 531/12*, released in March 2015, the Tribunal granted most, but not all of the items the self-represented worker had appealed. The worker requested a reconsideration of her decision.

However, in December 2015, the worker commenced actions in Toronto Superior Court against the WSIAT, the WSIB and her former employer, seeking damages of $20,000,000,

which she stated arose from her compensable injury.

Counsel for the Tribunal and the WSIB submitted a written request to the Court, asking that the Statement of Claim be dismissed pursuant to Rule 2.1 of the *Rules of Civil Procedure*. On March 10, 2016, Justice Myers ordered the action against the WSIB and WSIAT be dismissed on the grounds it could not succeed and was frivolous.

On July 28, 2016, the worker commenced a new action for damages against the WSIAT, the WSIB and her former employer, this time in Hamilton Superior Court. The Tribunal again made a written request under Rule 2.1 of the *Rules of Civil Procedure*. On September 13, 2016, the worker's action against the WSIB, the Tribunal, and the worker's former employer which had been commenced in Hamilton was dismissed by Justice Braid.

Other attempts by the worker to appeal the order of Justice Braid or to file other motions were not permitted by the Toronto or Hamilton Courts. The worker has made complaints to the Ombudsman, the Canadian Judicial Council and other organizations.

On December 14, 2016, the worker's request to reconsider *Decision No. 531/12* was denied in *Decision No. 531/12R*.

OMBUDSMAN REVIEWS

The Ombudsman's Office has the authority to investigate complaints about the Ontario Government and its agencies, including the Tribunal.

When the Ombudsman's Office receives a complaint about a Tribunal decision, the Office considers whether the decision is authorized by the legislation, whether the decision is reasonable in light of the evidence and whether the process was fair. In some cases, the Ombudsman's Office may make informal inquiries in order to satisfy itself that the decision was reasonable and the process fair. If the Ombudsman's Office identifies issues which indicate the need for a formal investigation, the Tribunal will be notified of the Ombudsman's intent to investigate. While an Ombudsman investigation may result in a recommendation to reconsider, this is unusual. Generally, the Ombudsman concludes that there is no reason to question the Tribunal's decision.

The Tribunal typically receives a few notifications of the Ombudsman's intent to investigate each year. In 2016, however, the Tribunal did not receive any new intent-to-investigate notifications, nor has it received any intent-to-investigate notifications since 2012. There were no outstanding intent-to-investigate files in 2016.

TRIBUNAL REPORT

TRIBUNAL ORGANIZATION

VICE-CHAIRS, MEMBERS AND STAFF

Lists of the Vice-Chairs and Members, senior staff and Medical Counsellors who were active at the end of the reporting period, as well as a list of 2016 reappointments and newly appointed Vice-Chairs and Members, can be found in Appendix A.

Executive Offices

The Chair, the Executive Director and a small group of dedicated staff comprise the Executive Offices of the Appeals Tribunal.

The Executive Offices manage the recruitment, appointment and re-appointment process for Order in Council (OIC) appointees (adjudicators) to WSIAT, and in doing so, work with the Ministry of Labour. The Office also responds to correspondence from parties and stakeholders. The Chair works closely with the Appeals Administrator, Counsel to the Chair and General Counsel on case-related matters.

In 2016, the Executive Offices focused on adjudicator recruitment to support caseload reduction. Competition postings for part-time and full-time Vice-Chairs and Member Representatives appeared on the Public Appointments Secretariat's website. At year end the Vice-Chair complement had increased to 67, from 53 at December 31, 2015.

Reporting into the Executive Offices, the OIC professional development committee is composed of the Orientation Vice-Chair, General Counsel, Counsel to the Chair, the Executive Director, the Manager of the Medical Liaison Office and the Executive Assistant to the Executive Offices. In 2016, the committee developed and co-ordinated the presentation of three professional development sessions for all Tribunal adjudicators.

The Adjudication Support Group reports into the Executive Offices to the Executive Assistant to the Chair. This group processes and releases all decisions prepared by Tribunal Panels and Vice-Chairs.

The Executive Director is responsible for the effective administration of the Tribunal's operations; managing the Tribunal's quality control processes; developing policies and procedures for effective administration and appeal processing in compliance with statutory obligations; supporting the educational needs of OIC appointees; and overseeing the preparation of the Tribunal's business and case management plans and quarterly reports. The Executive Director leads Tribunal operations with the support of a talented senior management team.

The Tribunal's administration is independent from the Workplace Safety and Insurance Board (WSIB) and the Ministry of Labour. In addition to the departments outlined in the following pages, the Tribunal administers its

own human resources and finance functions, and staff and adjudicator training. The Tribunal also provides shared services to the Ontario Labour Relations Board and the Pay Equity Hearings Tribunal pursuant to a Shared Services Agreement.

The Tribunal's Human Resources and Administration Department is led by the Director of Human Resources and Administration. The Human Resources team delivers the full range of labour relations and human resources functions to Tribunal managers and staff. These functions include: payroll, pension and benefits; staffing and recruitment; compensation and performance management; employee and labour relations; health, safety and wellness; corporate staff training and development; and support for the business planning cycle.

The Tribunal's Human Resources plan consists of three main priorities: leveraging organizational efficiencies, strengthening organizational capacity, and cultivating an inclusive, accessible and healthy work environment. These key priorities strategically align with the Tribunal's mission to provide exceptional quality public service.

In 2016, key human resources initiatives were directed in support of the Tribunal's caseload reduction strategy. Ongoing merit-based recruitment further increased personnel in appeal production areas, with the robust orientation and corporate training program aimed at accelerating the on-boarding process and contributions of new employees. The successful completion of collective bargaining negotiations with OPSEU local 527 in the first quarter of 2016 served to underscore the Tribunal's commitment to the promotion of positive labour relations, which remains critical to leveraging organizational efficiency, flexibility and resiliency.

The Tribunal's commitment to an inclusive, accessible and healthy workplace was achieved through refreshed Workplace Discrimination and Harassment Prevention and Workplace Violence Prevention e-learning programs, standard first-aid certification for designated employees, individualized employment accommodation, accessible emergency evacuation plans, ergonomic assessments, and air quality testing.

The Tribunal's Administration unit is responsible for co-ordinating the Tribunal's emergency management and security (EMS) program, and for facilities management and leasing services, including accommodations and upgrade requirements, telecommunications, surplus assets, and building support issues.

In 2016, emergency management and security projects included enhancement of the Tribunal's alarm system and response protocols, a refresh of the Tribunal's business continuity and contingency plans, and expanded EMS orientation and training. Facility projects included construction and space renovation projects to accommodate additional production staff, sound attenuation initiatives in both the public and secure areas of the Tribunal's premises, as well as general upgrades to facilitate production and technological advancements.

The Tribunal's Finance Department is responsible for the agency's finances and is

led by the Manager, Financial Management and Controllership. The department provides financial, budgetary, and purchasing and procurement advice, support, and assistance to the Tribunal's senior management group, staff, and OICs. The Finance group performs all the transactional based activities to ensure that payments to vendors and OIC appointees are properly verified and paid on a timely basis. They maintain the bank accounts and request monthly reimbursement and settlements of expenditures from WSIB. All purchasing and procurement activity for the Tribunal are managed and performed through the Finance Department. Other activities include the maintenance of the Tribunal's financial systems; the planning and development of the annual budget; the production and distribution of monthly, quarterly, and annual financial reports to senior management and the Ministry of Labour; and the planning and directing of the financial audit for the preparation and completion of the annual audited financial statements.

Office of the Counsel to the Chair

The Office of the Counsel to the Chair (OCC) has been in existence since the creation of the Tribunal in 1985. It is a small expert legal department which is separate from the Tribunal Counsel Office (TCO) and is not involved in making submissions at hearings. Publications Counsel is also a member of OCC.

OCC Lawyers

Draft review, which has been described in prior Annual Reports, is the responsibility of OCC lawyers. OCC lawyers also provide advice to the Chair and Chair's Office with respect to a range of matters, including accountability documents, practice and procedure, complicated reconsideration requests, post-decision inquiries, Ombudsman inquiries, conduct matters and other complaints.

A priority in 2016 was orientation training for new OIC appointees in order to support them in their role as expert decision-makers. This included updating the orientation materials for use by these OICs and in anticipation of further Order-in-Council appointments. OCC lawyers provided orientation training to 12 Vice-Chairs and two Side Members appointed in 2016. In addition, follow-up orientation sessions were provided to a number of OICs appointed over the last few years. Professional development for OICs and staff continued to be important, given the four different legislative schemes, statutory amendments, extensive Board policy and policy amendments. There was a continued focus on issues of interest to mid-level OICs, and two professional development sessions were developed and presented to them. OCC lawyers also continued work on various knowledge management resources to facilitate OIC access to information on law, policy and procedure through electronic means.

OCC lawyers are responsible for assisting the Tribunal in meeting its obligations under the *Freedom of Information and Protection of Privacy Act* (FIPPA). They handle FIPPA requests and appeals and provide advice on privacy matters. Assistance is also provided with respect to records management issues.

Publications Counsel

During 2016, the Tribunal released more than 3,600 decisions (an increase of 600 decisions over 2015) and Publications Counsel processed

more than 3,300 decisions. These decisions form part of the 72,640 decisions released since the Tribunal's creation in 1985. The interval between the release of a decision and its addition to the Tribunal's database is now about eight weeks.

All Tribunal decisions are published and available free of charge through the Tribunal's searchable databases on the Tribunal's website at wsiat.on.ca. A database record is created for each decision, which includes keywords and a link to the full text. Many records also contain a summary of the decision. In 2016, Publications Counsel wrote summaries for 1,065 decisions, approximately one-third of released decisions. The Tribunal database is searchable on a number of fields and the full text of Tribunal decisions is available free of charge on the website of the Canadian Legal Information Institute (CanLII) and on a paid basis on the LexisNexis (Quicklaw) website.

Since 2010, the Tribunal has also identified selected noteworthy decisions on the home page of its website. This service is designed to provide information about key decisions on medical, legal and procedural issues in a timely and easily accessible manner.

Office of the Vice-Chair Registrar

The staff of the Office of the Vice-Chair Registrar (OVCR) are the primary point of contact for appellants, respondents and representatives with an appeal or application at the Tribunal. They complete all initial processing of appeals and perform any post-hearing work that may be required. On receipt of an appeal, the Tribunal gives notice to the parties. When the appellant advises they are ready to proceed to a hearing, the Tribunal requests the claim or firm files from the Board. The Tribunal then prepares the appeal for hearing, ensuring that the appeal documents are complete and that the case is ready for hearing.

The Tribunal's pre-hearing staff utilize a variety of alternative dispute resolution (ADR) techniques to resolve appeals prior to the hearing. Staff trained in communication and conflict resolution work with both represented and unrepresented parties.

The Vice-Chair Registrar

The Tribunal's Vice-Chair Registrar is Martha Keil. On referral by Tribunal staff and the parties to the appeal, the Vice-Chair Registrar may make rulings on preliminary and pre-hearing matters such as admissible evidence, jurisdiction and the issue agenda. The process may be oral or written and results in a written decision with reasons. Requests to have a matter put to the Vice-Chair Registrar are raised with OVCR staff. The Vice-Chair Registrar also determines whether a file has been abandoned during the early stages of an appeal.

The Registrar's Office is divided into a number of areas.

The Alternative Dispute Resolution (ADR) Department

ADR staff review all incoming Notices of Appeal to determine if they are complete and whether there are any jurisdictional or evidentiary issues that would prevent the Tribunal from deciding an appeal. On occasion, appeals may be withdrawn by the appellant while the parties pursue other options. After

initial review, ADR staff refer appeals to the appropriate department for further processing.

Staff in the ADR Department also monitor appeals that are dormant or inactive, and work with the Vice-Chair Registrar to close those appeals that have been abandoned. This work allows other pre-hearing staff to focus on active appeals proceeding to hearing.

ADR services may be offered to the parties of an active appeal in an attempt to: resolve the issues in dispute without a formal hearing; simplify multi-issue appeals prior to proceeding to a hearing; and/or discuss significant problems (e.g., the absence of evidence, alternative courses of action). For suitable appeals, the ADR services offered may include a formal mediation held by a Tribunal Vice-Chair/mediator. If an agreement consistent with law and Board policy is reached, the Vice-Chair/mediator will issue a decision incorporating the terms of the executed agreement. If issues remain in dispute following ADR services, the appeal will be resolved via a hearing.

Applications for reconsideration of Tribunal decisions are also processed by ADR staff.

The Early Review Department

The Early Review Department is responsible for the initial processing of all Tribunal appeals. Staff review all Notices and Confirmations of Appeal to ensure that they are complete and meet legislative requirements. Staff provide notice of appeals to respondents, obtain relevant policy and claim file material from the WSIB and prepare Case Records for all appeals.

Vice-Chair Registrar Teams

Pre-hearing Work

All files are assigned to an OVCR senior legal worker or legal worker for substantive review to ensure that they are ready for hearing. This instrumental step reduces the number of cases that are adjourned or require post-hearing investigations due to an incomplete issue agenda, outstanding issues at the Board, or incomplete evidence. The legal workers respond to party correspondence and queries and to Vice-Chair or Panel instructions up to the hearing date. Complex files and appeals with self-represented workers are assigned to the senior legal workers.

Post-hearing Work

After a hearing, a Tribunal Vice-Chair or Panel may conclude that additional information or submissions are required before a decision can be made. In those circumstances, the Vice-Chair or Panel sends a written request for assistance to a manager in the OVCR. The manager then assigns the request to a legal worker in the OVCR or a lawyer in the Tribunal Counsel Office, depending on the complexity of the matters involved. The legal worker or lawyer carries out the directions of the Panel or Vice-Chair, and co-ordinates any necessary input from the parties to the appeal.

Typical post-hearing directions include instructions to obtain important evidence (usually medical) found to be missing at the hearing, to request a report from a Tribunal medical assessor, or to arrange for written submissions from the parties and Tribunal lawyers.

Appeal Services Department

This department includes staff in the Tribunal's Call Centre and Registrar Information Centre (RIC) staff. RIC staff monitor the activity on files from the time the legal workers have reviewed them up to the hearing date. They respond to incoming correspondence, refer more complex matters to appropriate staff, and finalize case materials.

Support Services Department

Support Services is comprised of the Records area and the Print Shop. Together, they provide records, mail, courier and print services for the Tribunal and other Agencies under the Shared Services Agreement (SSA).

Tribunal Counsel Office

The Tribunal Counsel Office (TCO) is a centre of legal and medical expertise at the Tribunal. Under the direction of the General Counsel, the TCO group provides assistance with the most complex legal and/or medical appeals. The TCO group consists of TCO lawyers and the Medical Liaison Office. These two groups work closely together and are supported by administrative staff.

TCO Lawyers

TCO has a small group of lawyers with significant expertise in workplace safety and insurance law and administrative law. TCO lawyers provide legal assistance for the most complex appeals at the Tribunal. These appeals are streamed to TCO from the Early Review Department and can also be assigned to TCO at the direction of a Vice-Chair or Panel.

Hearing Work

When a complex appeal is received by TCO prior to a hearing, the case is assigned to a lawyer. A TCO lawyer will have carriage of the appeal throughout the entire hearing process until a final decision is released. The TCO lawyer will help resolve legal, policy and evidentiary issues that arise prior to the hearing, including providing assistance to parties with respect to procedural matters. TCO lawyers also attend hearings and provide assistance by questioning witnesses as well as making legal and procedural submissions.

Post-hearing Work

After a hearing a Vice-Chair or Panel may conclude that additional information or submissions are required before a decision can be made. For complex cases, a lawyer in the TCO is assigned to carry out the directions of the Vice-Chair or Panel and co-ordinates any necessary input from the parties to the appeal.

Typical post-hearing directions include obtaining important evidence found to be missing at the appeal, requesting a report from a Tribunal medical assessor, or arranging written submissions from the parties. TCO lawyers also make post-hearing written submissions with respect to legal and procedural issues that have arisen.

Examples of appeals handled by TCO lawyers include complex occupational disease appeals, employer assessment appeals, appeals involving difficult procedural issues, and appeals which raise constitutional and *Charter*

of Rights and Freedoms issues. Bilingual TCO lawyers are also available to assist with French language appeals.

Other Roles

In addition to providing assistance with appeals directly, TCO lawyers also provide technical case-related advice to legal workers in the Office of the Vice-Chair Registrar.

A large component of TCO lawyer work involves providing non-appeal-related advice to other departments of the Tribunal. TCO lawyers routinely assist with Tribunal contracts, security and human resources issues, training and acting as a liaison with external organizations.

General Counsel and TCO lawyers also represent the Tribunal on applications for judicial review of Tribunal decisions and on other Tribunal-related court matters.

Medical Liaison Office

The Tribunal must frequently decide appeals that raise complex medical issues, or require further medical investigation. The Tribunal thus has an interest in ensuring that Panels and Vice-Chairs have sufficient medical evidence on which to base their decisions. The Medical Liaison Office (MLO) plays a major role in identifying and investigating medical issues, and obtaining medical evidence and information to assist the decision-making process.

To carry out its mandate, MLO seeks out impartial and independent expert medical expertise and resources. The Tribunal's relationship with the medical community is viewed as particularly important since, ultimately, the quality of the Tribunal's decisions on medical issues will be dependent on that relationship. MLO co-ordinates and oversees all the Tribunal's interactions with the medical community. MLO's success in maintaining a positive relationship with the medical community is demonstrated by the Tribunal's continuing ability to readily enlist leading members of the medical profession to provide advice and assistance.

MLO Staff

Jennifer Iaboni, RN, is the Manager of MLO. Jennifer has an outstanding clinical nursing background, having worked in surgical nursing for 11 years at Toronto Western Hospital, Centenary Health Centre, and York Central Hospital. In addition, Jennifer has 11 years experience in critical care and Jennifer gained valuable experience while working as a Nurse Case Manager and a Nurse Consultant at the WSIB.

The MLO Manager is assisted by a full-time MLO Officer. Rachel Dwosh, RN, is the MLO Officer. Rachel has a comprehensive clinical nursing background, having worked in surgical nursing at Vancouver General Hospital and in rural community health in Fort Smith. Rachel has three years experience in psychiatric nursing. Rachel gained valuable experience while working as a Nurse Consultant at the WSIB.

Medical Counsellors

The Medical Counsellors are a group of eminent medical specialists who serve as consultants to WSIAT. They play a critical

role in assisting MLO to carry out its mandate of ensuring the overall medical quality of Tribunal decision-making. The Chair of the Medical Counsellors is Dr. John Duff. A list of the current Medical Counsellors is provided in Appendix A.

Prior to a hearing, MLO identifies those appeals where the medical issues are particularly complex or novel. Once the issues are identified, MLO may refer the appeal materials to a Medical Counsellor. The Medical Counsellor reviews the materials to verify whether the medical evidence is complete and that the record contains opinions from appropriate experts. The Counsellor also ensures that questions or concerns about the medical issues that may need clarification for the Panel or Vice-Chair are identified. Medical Counsellors may recommend that a Panel or Vice-Chair consider obtaining a Medical Assessor's opinion if the diagnosis of the worker's condition is unclear, if there is a complex medical problem that requires explanation, or if there is an obvious difference of opinion between qualified experts.

At the post-hearing stage, Panels or Vice-Chairs may need further medical information to decide an appeal. These adjudicators may request the assistance of MLO in preparing specific questions for Medical Assessors. Medical Counsellors assist MLO by providing questions for the approval of the Panels or Vice-Chairs, and by recommending the most suitable Medical Assessor.

Medical Assessors

As the Courts have recognized, the Tribunal has the discretion to initiate medical investigations, including consulting medical experts, in order to determine any medical question on an appeal (*Roach v. Ontario (Workplace Safety and Insurance Appeals Tribunal)*, [2005] O.J. No. 1295 (Ont. C.A.)). These medical experts are known as the Tribunal's "Assessors."

Only the most outstanding medical experts are retained as Assessors. Most Assessors are members of a College as defined in the *Regulated Health Professions Act, 1991*. All Assessors must be impartial. They cannot be employees of the WSIB, and neither the Assessors nor their business partners can have treated the worker or a member of the worker's family or acted as a consultant for the worker's employer.

Medical Assessors may be asked to assist the Tribunal in a number of ways. Most often, they are asked to give their opinion on some specific medical question, which may involve examining a worker and/or studying the medical reports on file. They may be asked for an opinion on the validity of a particular theory which a Hearing Panel or Vice-Chair has been asked to accept. They may be asked to comment on the nature, quality or relevancy of medical literature. Medical Assessors also assist in educating Tribunal staff and adjudicators in a general way about a medical issue or procedure coming within their area of expertise.

The opinion of a Medical Assessor is normally sought in the form of a written report. A copy of the report is made available to the worker, employer, the Panel or Vice-Chair, and (after the appeal) the Board. On occasion, a Hearing Panel or Vice-Chair will want the opportunity

to question the Medical Assessor at the hearing to clarify the Assessor's opinion. In those cases, the Medical Assessor will be asked to appear at the hearing and give oral evidence. The parties participating in the appeal, as well as the Panel or Vice-Chair, have the opportunity to question and discuss the opinion of the Medical Assessor.

Although the report of a Medical Assessor will be considered by the Tribunal Panel or Vice-Chair, the Courts have recognized that the Medical Assessor does not make the decision on appeal (*Hary v. Ontario (Workplace Safety and Insurance Appeals Tribunal)*, [2010] O.J. No. 5384, (Ont. Div. Ct.)). The actual decision to allow or deny an appeal is the sole preserve of the Tribunal Panel or Vice-Chair.

The Appointment Process for Medical Assessors

The Medical Counsellors identify highly qualified medical professionals eligible to be Tribunal Assessors. Those medical professionals who agree to be nominated as candidates have their qualifications circulated to all the Medical Counsellors, and to members of the WSIAT Advisory Group. The Tribunal has the benefit of the views of the Medical Counsellors and the Advisory Group when it determines the selection for Assessors. Assessors who are a member of a College may be named to a list of Assessors for a three-year term, and may be renewed. Assessors who are not a member of a College may also be named to a separate list of Assessors.

MLO Resources Available to the Public

MLO places medical discussion papers and anonymized medical reports on generic medical or scientific issues in the Ontario Workplace Tribunals Library. This publicly-accessible collection of medical information specific to issues that arise in the workers' compensation field is unique within the Ontario WSIB system. New medical information is announced and available on the WSIAT's website.

Of all the medical information made available by MLO, WSIAT Medical Discussion Papers are the most frequently requested. The Tribunal commissions Medical Discussion Papers to provide general information on medical issues which may be raised in Tribunal appeals. Each Medical Discussion Paper is written by a recognized expert in the field selected by the Tribunal, and each expert is asked to present a balanced view of the current medical knowledge on the topic.

Medical Discussion Papers are intended to provide a broad and general overview of a topic, and are written to be understood by lay individuals. Medical Discussion Papers are not peer reviewed and do not necessarily represent the views of the Tribunal. A Vice-Chair or Panel may consider and rely on the medical information provided in the Discussion Paper, but the Tribunal is not bound by a Medical Discussion Paper in any particular case. It is always open to parties to an appeal to rely on or distinguish a Medical Discussion Paper, or to challenge it with alternative evidence.

Medical Discussion Papers are available to the public through the WSIAT website.

TCO Support Staff

TCO and the Medical Liaison Office work with a small group of dedicated support staff. Working under the direction of the Supervisor of Administrative Services, TCO support staff assist with case-tracking input, file management, preparation and filing of court documents, and general support duties.

Scheduling Department

The Tribunal's Scheduling Department is led by the Appeals Administrator. Once an appeal is hearing ready, the Department receives a request to schedule a hearing date from the Tribunal Counsel Office or the Office of the Vice-Chair Registrar. The Department co-ordinates the hearing schedule for all appeals, oral and written, heard by the Tribunal. The Tribunal conducts hearings in both English and French. The Tribunal schedules hearings in Hamilton, Kitchener, London, Oshawa, Ottawa, Sault Ste. Marie, Sudbury, Thunder Bay, Timmins, Toronto and Windsor. The Department uses a long-standing scheduling model that allows for consultation with parties in the setting of hearing dates. As well, the Department arranges for interpreters, regional boardrooms, service of summonses, the scheduling of pre-hearing conferences and determines the amount of time designated for a hearing and the hearing location. Pre-hearing adjournment requests are decided by the Appeals Administrator.

Information and Technology Services

The Information and Technology Services Department (ITS) designs, develops and implements the following information and information technology services for the Tribunal:

- manages the operations of the Ontario Workplace Tribunals Library (OWTL);
- develops policies and strategies for delivering, sustaining and improving information services and information technologies;
- develops, maintains and improves information and information technology resources;
- implements procedures to protect, organize and maintain the Tribunal's information and information systems;
- designs and delivers end-user assistance programs;
- plans and evaluates the organization's productivity and provides individual and unit feedback regarding caseload management; and,
- implements procedures and processes to ensure that information is made available in ways that are consistent with the principles, laws and directives governing language, content and accessibility and that information is managed in accordance with rules governing collection, use, disclosure and retention.

Library and Research Services

The Ontario Workplace Tribunals Library is a shared resource of the Workplace Safety and Insurance Appeals Tribunal, the Ontario Labour Relations Board (OLRB) and the Pay Equity Hearings Tribunal (PEHT). It provides research and reference services to staff and adjudicators of the client tribunals, as well as current awareness services. The Library's collections function as a regulatory archive, preserving and making available the client tribunals' decisions, superseded versions of relevant statutes, regulations, rules and policies as well as providing the current state of the law and commentary. The collections and expertise of the staff are available to members of the public to use, when licensing permits.

In 2016, Library staff answered over 700 reference questions concerning workplace safety, workers' compensation, labour relations, union certification, pay equity matters and general legal/legislative research. The Library continues to add public documents to the OWTL website to meet the increased demand for online access to our specialized collections. Workshops and training programs were delivered to adjudicators and staff at our client tribunals, covering topics such as searching WSIAT Decision Databases, Labour Research, Legal and Legislative Research, and e-Laws. Library staff also administer the transfer of Tribunal decisions to legal vendors such as CanLII and Quicklaw.

As well, in 2016, the following projects were undertaken:

- OLRB union certificates continue to be digitized and indexed for easier access;
- preparation and presentation of eight training modules for WSIAT, OLRB and staff; and,
- development of eLearning videos for WSIAT Adjudicators orientation and training.

Policy Development and Implementation

The Tribunal's main policies relating to information services include the *Recorded Information Management Policy*, *Privacy Guidelines Policy*, *Policy Regarding Use of Information Technology* and the *OIC Computer Support Policy*. These policies are reviewed regularly to determine if revisions are necessary or desirable. In 2016, the *OIC Computer Support Policy* was modified to reflect new recommendations regarding computer equipment for OIC remote access.

Technology Procurements and Equipment Upgrades

In 2016, the Tribunal upgraded the WAN and wireless services and modernized its hearing room video presentation systems. The Tribunal also implemented a new process for encrypting video files and a related process for replicating encrypted files. In 2016, the Tribunal also renewed its volume license agreement for Microsoft software products, and the Tribunal also established leases for a new fleet of workgroup printers.

Portal and Software Development

As in prior years, the Department's software team made numerous upgrades and made numerous improvements to existing features in the automated case management software systems. Noteworthy in this regard were changes made to process and to capture data for the Tribunal's new videoconference hearing project that will commence in February 2017.

The developers also implemented a new Open Data portal on the Tribunal's public website.

User Support and Technology Training

Throughout 2016, Information and Technology Services staff ensured that IT resources and services were available to all of the Tribunal's OICs and employees. As part of their regular duties, technicians granted and revoked access privileges, created and managed permissions profiles for applications and shared folders, and managed the Tribunal's information backup protocols. The staff also conducted new user orientation and topical seminars for adjudicators and for staff throughout the course of the year. They partnered with private firms (service providers) to ensure that internet sites were effectively hosted, incoming email was effectively routed and filtered, and that the Tribunal's computer room protection equipment was continually monitored and serviced at the regular quarterly and annual service intervals.

The Department's regular hours of business were supplemented by four pre-scheduled weekend shut-downs when software patches and software updates were applied.

The Department maintains a comprehensive IT Help Request service. This service is accessed electronically by staff and by OICs from any computer workstation at the Tribunal and from any Tribunal-configured remote connection. In 2016, through this service, the Department handled on average 554 support service requests each month. This total represented an increase of 13% as compared with the previous year. The distribution of types of support services was similar to the distribution in previous years. Sixty-four per cent of the support requests were for software application support. This was followed by network account management (14%), requests for connection assistance (7%), and equipment servicing (7%). Equipment bookings (5%) and topical training requests (3%) accounted for the remainder.

Information Management

The Department supported the Tribunal and facilitated the annual implementation of the Tribunal's electronic records schedules. This involved providing managers with information about files subject to review and deletion, assisting managers in their retention and deletion responsibilities and ensuring that records of deletion were filed as required.

French Language Translation Services

In accordance with the *French Language Services Act* of Ontario, the Tribunal offered services in French to its Francophone stakeholders. This included the translation of materials for Francophone parties to the appeals, as well as the translation of electronic

and print materials published by the Tribunal and posted on the Tribunal's website.

Caseload and Production Reporting

In 2016, the Department provided regular feedback to individuals, teams and to the senior management team regarding caseload intake, caseload movement and productivity. As in previous years, the Department's statistician compiled and distributed these reports according to weekly, monthly and quarterly schedules.

Production and Systems Infrastructure Planning

In the fourth quarter, the Department participated in the development of caseload management planning for 2017. The Department developed models to forecast the production capacity dependent upon various assumptions regarding Vice-chair, side Member and decision support resources.

Also in the fourth quarter, the Department prepared its annual multi-year IT infrastructure plan. This plan includes budgeting and cost estimates for IT equipment and services.

CASELOAD PROCESSING

INTRODUCTION

The Workplace Safety and Insurance Appeals Tribunal is the final level of appeal to which workers and employers may bring disputes concerning workplace safety and insurance matters in Ontario.

At the Tribunal, appeals proceed through a two-part application process. To start an appeal and meet the time limits in the legislation, an appellant files a Notice of Appeal form (NOA). Appeals remain at this "notice" stage while preliminary information is gathered and until the appellant indicates readiness to proceed toward an appeal hearing. The appellant indicates readiness by filing the Confirmation of Appeal form (COA). Once the COA is received at the Tribunal, the appeal enters the second, or "resolution" processing stage.

CHART 1

ACTIVE CASES ON DECEMBER 31, 2016

Notice Process	
Cases active in Notice stage processing	1,625
	1,625
Resolution Process	
Early Review stage	50
Substantive Review	3,083
Hearing Ready	128
Scheduling and Post-hearing	2,825
WSIAT Decision Writing	445
	6,531
Total Active Cases	**8,156**

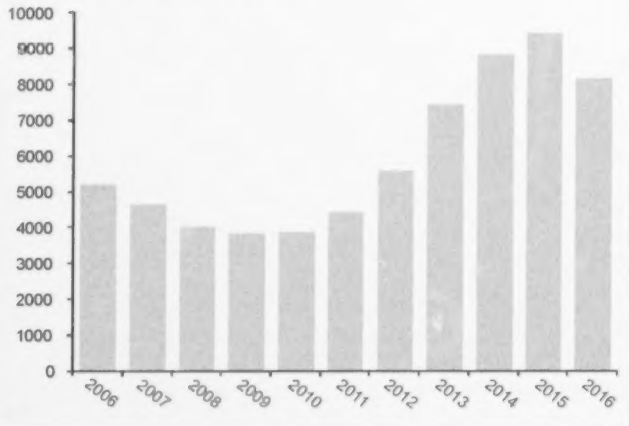
Caseload

At the end of Year 2016, there were 8,156 active cases within these two process stages. Chart 1 shows the distribution in more detail.

Active Inventory

The level of the Tribunal's active inventory is affected by three factors: the number of incoming appeals in a year, the number of appeals that are confirmed as ready to proceed in that year, and the number of hearings and other appeal dispositions that are achieved in the year. In 2016, these factors combined to produce a 14% overall decrease in the active inventory as compared to the 2015 year-end figure. Chart 2 shows the active inventory in comparison to previous years.

CHART 2



Incoming Appeals

The incoming caseload trend is shown in Chart 3. In 2016, the Tribunal's overall intake from new appeals and reactivations totaled 3,746 and this represented a total decrease of 15% as compared with the 2015 intake total. "Reactivations" are appeals in which the appellant has indicated a readiness to proceed with the appeal following an inactive period during which the appellant may have acquired new medical evidence, received another final decision from the Board or sought new representation. New appeals to the Tribunal are appeals of final decisions at the Board's Appeals Services Division.

Case Resolutions

The Tribunal achieves case resolutions (also known as case dispositions) in a number of different ways. The most frequent source of case resolution is through a written Tribunal decision following an oral or written hearing process. The WSIA requires written reasons. Also, the Board requires written reasons to implement a decision. Other methods of dispute resolution, used primarily in the pre-hearing areas, are: telephone discussions regarding issue agendas and evidence; file reviews for jurisdiction issues or compliance with time limits; and, where two parties are participating, staff mediation.

CHART 3

INCOMING APPEALS

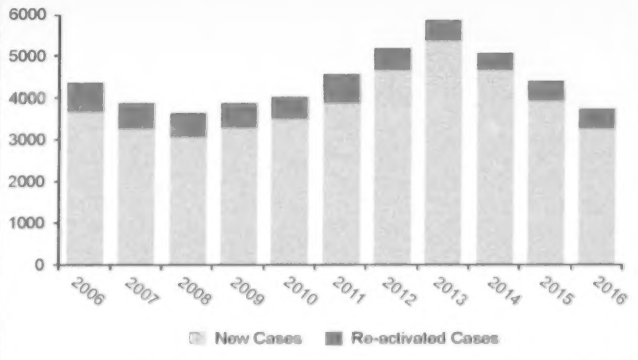


CHART 4

CASES DISPOSED OF IN 2016

Pre-hearing Dispositions	
Without Tribunal Final Decisions	
Made Inactive	586
Withdrawn	973
	1,559
Hearing Dispositions	
Without Tribunal Final Decisions	
Made Inactive	62
Withdrawn	14
With Final Decisions	3,436
	3,512
Total (Pre-hearing and Hearing)	
Without Tribunal Final Decisions	1,635
With Tribunal Final Decisions	3,436
	5,071

As shown in Chart 4, the Tribunal disposed of 5,071 cases in 2016. This included 1,559 "Pre-hearing" and 3,512 "Hearing" dispositions.

Issues in the Appeals

Chart 5 shows the percentage breakdown of issues among the cases disposed in year 2016.

CHART 5

ISSUES IN THE DISPOSITIONS

Percent	Issues
24%	Loss of earnings
16%	Non-economic loss (NEL) and NEL quantum
8%	New area of injury
7%	Initial entitlement
6%	Work transition
4%	Health care benefits
4%	Ongoing entitlement
4%	Psychotraumatic disability
4%	Other
4%	Chronic pain
3%	Recurrence
3%	Labour market re-entry and safe return to work
3%	SIEF (Second Injury and Enhancement Fund)
3%	Permanent disability (PD) and PD quantum
1%	Future economic loss (FEL)
1%	Earnings basis
1%	Supplementary benefits
1%	Temporary total disability
1%	Occupational disease
1%	Mental stress
<1%	WSIAT objection
<1%	Hearing loss
<1%	Experience rating retroactivity

Timeliness of Appeal Processing

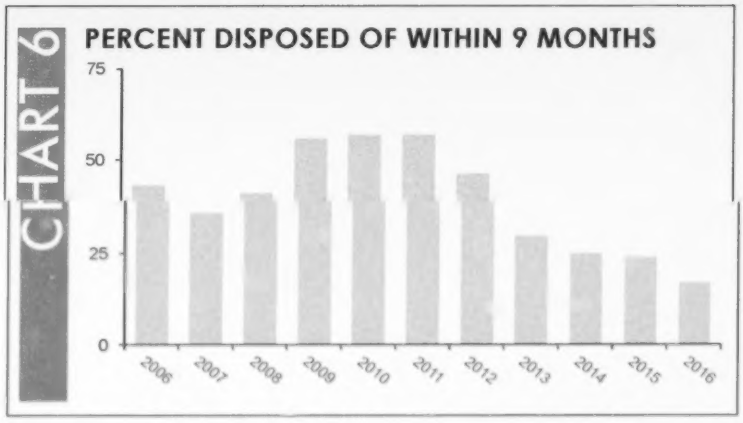
Chart 6 illustrates performance in terms of time frame for completing cases. The time frame begins when the appellant confirms readiness to proceed to a hearing and ends when the case is disposed. In 2016, the percentage of cases resolved within nine months was lower than it was in 2015. (In 2016, 17% of cases were resolved within nine months, compared to 24% in 2015.)

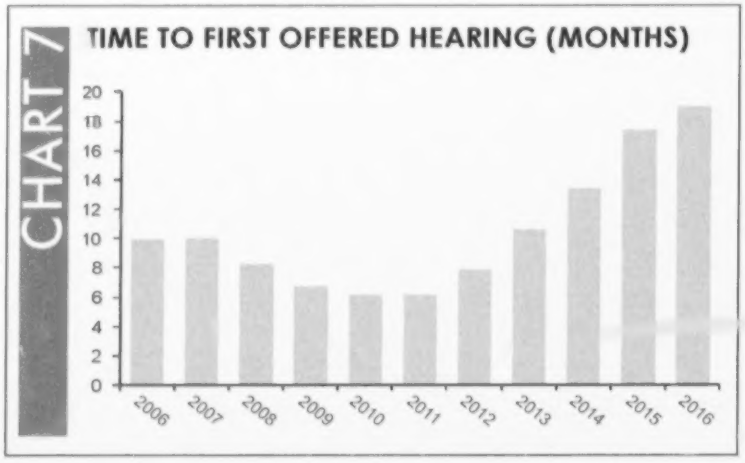
The Tribunal also measures the median interval of the first offered hearing date. This interval is measured from the date on which cases are confirmed ready to proceed to the future hearing date first offered to the parties. Chart 7 shows that the typical length of time for this stage in the appeals process was longer than it was in year 2015 (19.0 months in 2016, compared to 17.4 months in 2015).

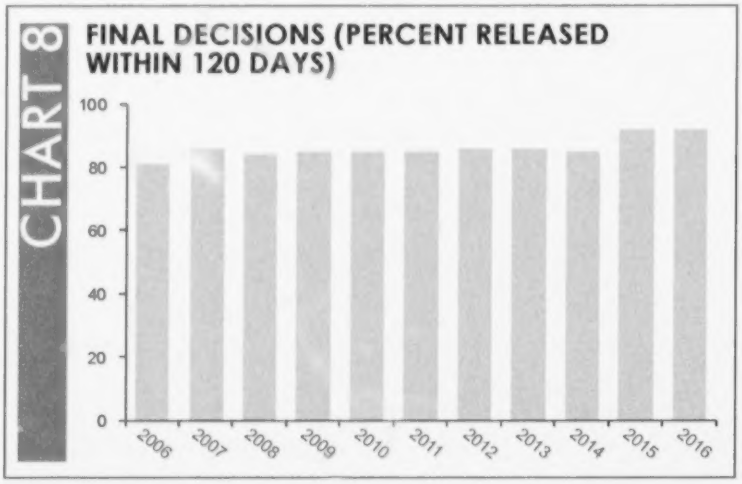
An additional performance target for the Tribunal is to release final decisions within 120 days of completing the hearing process. As shown in Chart 8, in 2016, this target was achieved 92% of the time.

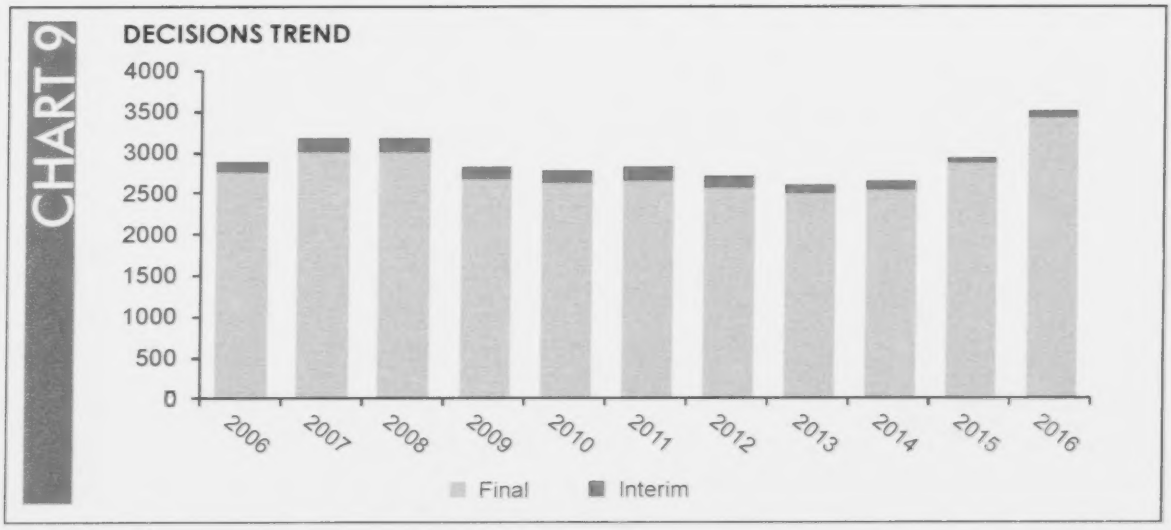
Hearing and Decision Activity

In 2016, the Tribunal conducted 3,500 hearings and issued 3,515





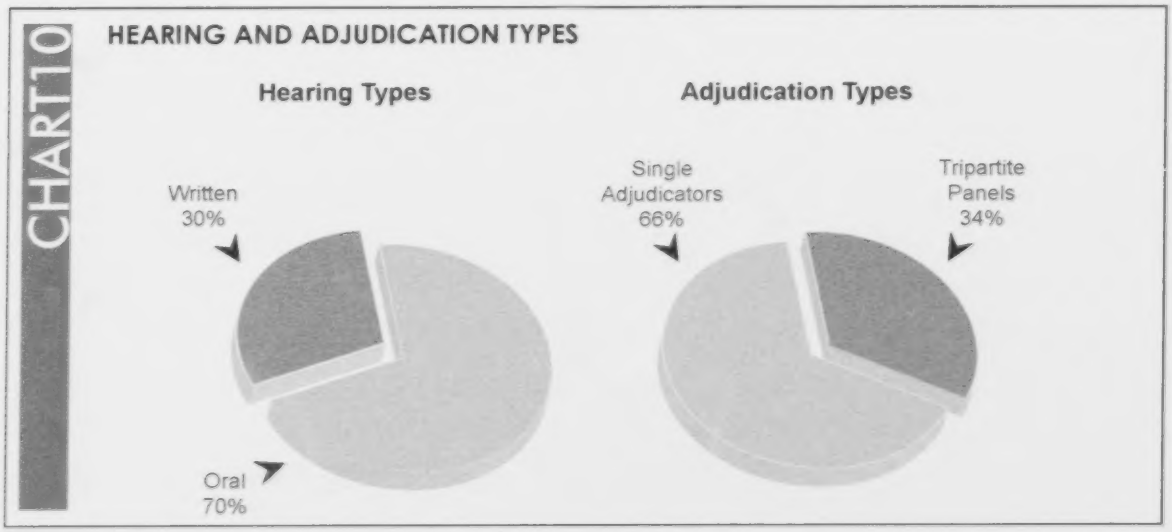




decisions. The Tribunal strives to achieve decision-readiness following completion of the first hearing. Some cases require post-hearing work following the first hearing, and some hearings are adjourned requiring a subsequent hearing before the same or a different Vice-Chair or Panel. Most cases require only a single hearing. Chart 9 depicts the Tribunal's Hearing and Decision production.

Hearing Type

In 2016, the percentage breakdown of hearing types was as follows: oral hearings continued to be the most common hearing type at 70%, followed by written hearings at 30%. The breakdown between single adjudicator hearings (66%) and tripartite panel hearings (34%) was the same as it had been in 2015. Chart 10 presents these hearing characteristics.

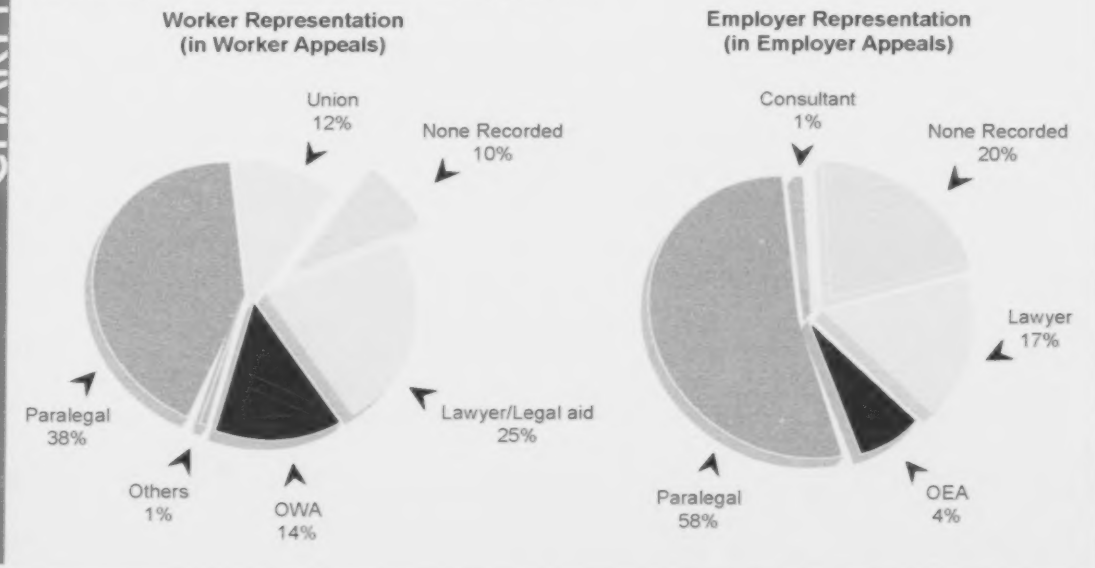


Representation at Hearing

Tribunal statistics show that for injured workers, 38% were represented by paralegals; 25% by lawyers and legal aid; 14% by the Office of the Worker Adviser; and, 12% by union representatives. The remaining 10% is allocated among various non-categorized representation, for instance, family friend or family member. Employers were represented before the Tribunal as follows: 58% were represented by paralegals; 17% were represented by lawyers; 4% by the Office of the Employer Adviser; 1% by consultants and, less than 1% by firm personnel. The remaining 20% are non-categorized. These characteristics are presented in Chart 11.

CHART 11

WORKER AND EMPLOYER REPRESENTATION



Caseload by General Appeal Issue Type

In 2016, Entitlement-related cases constituted the majority of cases (97%). Special Section cases (Right to Sue and Access) comprised typically small portions (3%). Charts 12 and 13 provide historical comparisons of incoming cases and cases disposed in 2016.

Dormant and Inactive Cases

The Tribunal's overall caseload includes some that are not active. This includes cases at the preliminary "notification" (or Notice of Appeal) stage, specifically those cases which have not been moved into resolution processing because the appellants have not completed the necessary filing requirements. These cases are referred to as "dormant at the notice of appeal stage." Cases that are dormant will be moved again into active processing when appellants resume active participation. When this does not occur within the overall maximum timeframe for the notice stage, the Tribunal will close the case.

CHART 12

INCOMING CASES BY APPEAL TYPE

	2013		2014		2015		2016	
TYPE	**No.**	**(%)**	**No.**	**(%)**	**No.**	**(%)**	**No.**	**(%)**
Leave	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Right to Sue	65	1.1%	54	1.1%	75	1.7%	66	1.8%
Medical Exam	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Access	78	1.3%	57	1.1%	56	1.3%	55	1.5%
Total Special Section	**143**	**2.4%**	**111**	**2.2%**	**131**	**3.0%**	**121**	**3.2%**
Preliminary (not yet specified)	1	0.0%	3	0.1%	1	0.0%	63	1.7%
Pension	1	0.0%	0	0.0%	0	0.0%	1	0.0%
N.E.L./F.E.L. *	4	0.1%	0	0.0%	2	0.0%	34	0.9%
Commutation	0	0.0%	0	0.0%	1	0.0%	0	0.0%
Employer Assessment	262	4.5%	290	5.7%	257	5.9%	88	2.3%
Entitlement	5267	89.9%	4487	88.4%	3860	88.0%	3288	87.8%
Ext. post WSIB dec. deadline	171	2.9%	173	3.4%	126	2.9%	125	3.3%
Jurisdiction Time Limit	0	0.0%	1	0.0%	0	0.0%	0	0.0%
Reinstatement	0	0.0%	0	0.0%	1	0.0%	0	0.0%
Vocational Rehabilitation **	1	0.0%	1	0.0%	0	0.0%	2	0.1%
Classification	0	0.0%	5	0.1%	0	0.0%	10	0.3%
Interest NEER	1	0.0%	0	0.0%	0	0.0%	0	0.0%
Total Entitlement-related	**5708**	**97.5%**	**4960**	**97.7%**	**4248**	**96.8%**	**3611**	**96.4%**
Jurisdiction	5	0.1%	5	0.1%	9	0.2%	14	0.4%
	5856		**5076**		**4388**		**3746**	

NOTES: This chart excludes the post-decision components of workload (requests for Reconsiderations, Ombudsman investigations and Judicial reviews). These figures are given in Charts 14, 15 and 16.

*The NEL/FEL category represents appeals related to the non-economic and future economic-loss pension criteria introduced by Bill 162.

**The Vocational Rehabilitation category represents appeals related to the increased Vocational Rehabilitation requirements introduced by Bill 162.

CHART 13

DISPOSITIONS BY APPEAL TYPE

	2013		2014		2015		2016	
	No.	(%)	No.	(%)	No.	(%)	No.	(%)
Leave	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Right to Sue	47	1.3%	48	1.3%	58	1.4%	72	1.4%
Medical Exam	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Access	86	2.3%	66	1.7%	63	1.5%	45	0.9%
Total Special Section	**133**	**3.6%**	**114**	**3.0%**	**121**	**2.8%**	**117**	**2.3%**
Preliminary (not yet specified)	1	0.0%	3	0.1%	1	0.0%	23	0.5%
Pension	0	0.0%	0	0.0%	0	0.0%	0	0.0%
N.E.L./F.E.L. *	3	0.1%	2	0.1%	3	0.1%	5	0.1%
Commutation	0	0.0%	0	0.0%	0	0.0%	2	0.0%
Employer Assessment	312	8.3%	290	7.6%	296	7.0%	298	5.9%
Entitlement	3113	83.1%	3197	84.1%	3653	85.8%	4447	87.7%
Ext post WSIB dec deadline	177	4.7%	188	4.9%	169	4.0%	162	3.2%
Jurisdiction Time Limit	0	0.0%	0	0.0%	1	0.0%	0	0.0%
Reinstatement	0	0.0%	0	0.0%	1	0.0%	0	0.0%
Vocational Rehabilitation **	0	0.0%	0	0.0%	1	0.0%	1	0.0%
Classification	2	0.1%	0	0.0%	1	0.0%	0	0.0%
Interest NEER	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Total Entitlement-related	**3608**	**96.3%**	**3680**	**96.8%**	**4126**	**96.9%**	**4938**	**97.4%**
Jurisdiction	4	0.1%	7	0.2%	9	0.2%	16	0.3%
	3745		**3801**		**4256**		**5071**	

NOTES: This chart excludes the post-decision components of workload (requests for Reconsiderations, Ombudsman investigations and Judicial reviews). These figures are given in Charts 14, 15 and 16.

*The NEL/FEL category represents appeals related to the non-economic and future economic-loss pension criteria introduced by Bill 162.

**The Vocational Rehabilitation category represents appeals related to the increased Vocational Rehabilitation requirements introduced by Bill 162.

The second category of "not active" cases is used to describe appeals that were made inactive after the notice process had been completed (i.e. after the cases had been "confirmed" ready to proceed and after they had been moved into the Tribunal's resolution processing stage). Cases are placed in this inactive category by request of the appellant or by a Tribunal Vice-Chair. The most common reasons for placing a file in the inactive category are to allow an appellant to pursue additional medical reports; obtain a representative; or/and obtain a final ruling from the Workplace Safety and Insurance Board pertaining to an issue raised at the Tribunal hearing.

In 2016, the number of dormant cases decreased to 1,226 from 1,273 at the end of 2015 and the number of inactive cases decreased to 1,685 from 1,749. Taken as a whole, this meant that the number of not active cases decreased by 4% in 2016.

Post-decision Workload

The post-decision workload is derived from three sources: Ombudsman follow-ups (Chart 14), Reconsideration requests (Chart 15) and Judicial Reviews (Chart 16). The post-decision workload is predominantly driven by Reconsideration requests. In year 2016, 164 Reconsideration requests were received.

CHART 14

OMBUDSMAN COMPLAINTS, ACTIVITY AND INVENTORY SUMMARY	
New Complaint Notifications Received	0
Complaints Resolved	0
Complaints Remaining	0

CHART 15

RECONSIDERATION REQUESTS, ACTIVITY AND INVENTORY SUMMARY	
Inquiries (Pre-reconsideration) Remaining	40
Reconsideration Requests Received	164
Reconsideration Requests Resolved	111
Reconsiderations Remaining	190

CHART 16

JUDICIAL REVIEWS, ACTIVITY AND INVENTORY SUMMARY	
Judicial Reviews at January 1st	12
Judicial Reviews Received	5
Judicial Reviews Resolved	4
Judicial Reviews Remaining	13

A Statement of Expenditures and Variances for the year ended December 31, 2016 (Chart 17) is shown below.

CHART 17

Statement of Expenditures and Variances
For The Year Ending December 31, 2016
(in $000s)

	2016 BUDGET	2016 ACTUALS	VARIANCE $	VARIANCE %
OPERATING EXPENSES				
Salaries and Wages	11,703	11,366	336	2.9
Employee Benefits	2,535	2,653	(118)	(4.7)
OTHER DIRECT OPERATING EXPENSES				
Transportation and Communication	909	905	4	0.4
Services	6,885	7,028	(143)	(2.1)
Supplies and Equipment	461	457	4	0.9
Total Other Direct Operating Expenditures	8,255	8,390	(135)	(1.6)
Total - WSIAT	22,492	22,409	83	0.4
Services - WSIB	530	540	(10)	(1.9)
Interest Revenue	(8)	(4)	3	44.0
TOTAL OPERATING EXPENSES	**23,015**	**22,945**	**70**	**0.3**
ONE-TIME EXPENSES				
Severance Payment	300	574	(274)	(91.4)
CRA 2010-2014 CPP & EI Re-Assessment	0	41	(41)	n/a
Active Caseload Reduction	2,004	1,992	12	0.6
TOTAL EXPENDITURES	**25,319**	**25,552**	**(233)**	**(0.9)**
The total annual remuneration for all OIC appointees included above:		6,746		

Note:

The above 2016 actuals are presented on the same basis as the approved budget and differ from the year-end audited Financial Statements presentation (see note 2 to the financial statements). The Difference of ($754) is comprised of the following:

CAPITAL FUND		
Amortization	103	
Fixed Assets acquired	(201)	(98)
OPERATING FUND		
Accrued Severance, Vacation Benefits, & HCSA	(650)	
Prepaid Expenses	(6)	(656)
		(754)

The accounting firm of Deloitte LLP has completed a financial audit on the Tribunal's financial statements for the year ended December 31, 2016. The Independent Auditor's Report is included as Appendix B.

APPENDIX A

VICE-CHAIRS AND MEMBERS IN 2016

This is a list of Vice-Chairs and Members whose Order-in-Council appointments were active at the end of the reporting period.

Full Time	Initial appointment
Chair	
Corbett, David	September 6, 2016
Vice-Chairs	
Baker, Andrew	June 28, 2006
Crystal, Melvin	May 3, 2000
Darvish, Sherry	August 12, 2009
Dee, Garth	June 17, 2009
Dimovski, Jim	November 19, 2014
Kalvin, Bernard	October 20, 2004
Keil, Martha	February 16, 1994
Martel, Sophie	October 6, 1999
McCutcheon, Rosemarie	October 6, 1999
Noble, Julia	October 20, 2004
Patterson, Angus	June 13, 2007
Petrykowski, Luke	October 3, 2012
Ryan, Sean	October 6, 1999
Smith, Joanna	August 28, 2013
Members representative of employers	
Christie, Mary	May 2, 2001
Members representative of workers	
Ferrari, Mary	July 15, 2005
Grande, Angela	January 7, 2000
Hoskin, Kelly	June 13, 2007

Part-time	Initial appointment
Vice-Chairs	
Alexander, Bruce	May 3, 2000
Allen, Paul	February 24, 2016
Basa, Rosemary	May 18, 2016
Bradbury, Laura	January 5, 2015
Burns, Beverley	November 28, 2016
Cappell, Barbara	February 24, 2016
Cooper, Keith	December 16, 2009
Daniel, Helen	November 2, 2016
Dempsey, Colleen L.	November 10, 2005
Doherty, Barbara	June 22, 2006
Frenschkowski, JoAnne	March 4, 2013
Gehrke, Linda	November 4, 2015
Goldberg, Bonnie	May 27, 2009
Goldman, Jeanette	June 22, 2006
Hale, Donald	January 15, 2016
Hoare, Rhea	October 26, 2016
Hodis, Sonja	July 15, 2009
Huras, Christina	February 10, 2016
Iima, Katherine	January 5, 2015
Jepson, Kenneth	December 10, 2014
Josefo, Jay	January 13, 1999
Kosmidis, Elizabeth	June 17, 2015
Lampert, Leigh	September 8, 2015
Lang, John B.	July 15, 2005
Lawford, Michele	May 29, 2013
MacAdam, Colin	May 4, 2005
Mackenzie, Ian	October 9, 2013
Marafioti, Victor	March 11, 1987
McBey, Donald	June 22, 2016
McCaffrey, Grant	July 22, 2015
McGarvey, Matthew	July 22, 2015
McKenzie, Mary E.	June 22, 2006
Mitchinson, Tom	November 10, 2005
Moore, John	July 16, 1986
Nairn, Rob	April 29, 1999
Nemetz, Theodore	June 30, 2016
Netten, Shirley	June 13, 2007
Onen, Zeynep	November 4, 2015
Peckover, Susan	October 20, 2004
Perryman, Natalie	January 5, 2015

Part-time	Initial appointment

Vice-Chairs (continued)

Ramsay, Christopher	May 18, 2016
Roberts, Catherine	November 28, 2016
Sager, Fern	November 16, 2016
Sand, Caroline	March 11, 2015
Shime, Sandra	July 15, 2009
Smith, Eleanor	February 1, 2000
Smith, Marilyn	February 18, 2004
Sutherland, Sara	September 6, 1991
Sutton, Wendy	May 27, 2009
Tanzola, Carissa	August 4, 2016
Ungar, Susan	September 11, 2013
Wood, Robert	September 30, 2015
Woodrow, Rebecca	June 22, 2016

Members representative of employers

Blogg, John	November 14, 2012
Davis, Bill	May 27, 2009
Falcone, Mena	October 21, 2015
Lipton, Mary	February 24, 2016
Phillips, Victor	November 15, 2006
Purdy, David	December 16, 2009
Sahay, Sonya	November 29, 2008
Tracey, Elaine	December 7, 2005
Trudeau, Marcel	April 16, 2008
Wheeler, Brian	April 19, 2000
Young, Barbara	February 17, 1995

Members representative of workers

Besner, Diane	January 13, 1995
Briggs, Richard	August 21, 2001
Broadbent, Dave	April 18, 2001
Carlino, Gerry	October 3, 2012
Crocker, James	August 1, 1991
Jackson, Faith	December 11, 1985
Roth, Stephen	February 24, 2016
Salama, Claudine	October 3, 2012
Signoroni, Antonio	September 29, 2010
Tzaferis, Mary	December 7, 2016

VICE-CHAIRS AND MEMBERS — REAPPOINTMENTS EFFECTIVE 2016

	Effective
Bruce Alexander	July 9, 2016
Diane Besner	January 13, 2016
John Blogg	November 14, 2016
David Broadbent	April 18, 2016
James Crocker	November 1, 2016
Colleen L. Dempsey	November 10, 2016
Jim Dimovski	February 24, 2016[1]
Barbara Doherty	August 13, 2016
Mary Ferrari	July 15, 2016
Jeanette Goldman	September 17, 2016
Faith Jackson	November 1, 2016
Kenneth Jepson	December 10, 2016
Jay Josefo	January 14, 2016
Bernard Kalvin	June 1, 2016
John B. Lang	July 15, 2016
Colin MacAdam	May 4, 2016
Victor Marafioti	February 18, 2016
Sophie Martel	October 6, 2016
Rosemarie McCutcheon	October 6, 2016
Mary E. McKenzie	June 22, 2016
Tom Mitchinson	November 10, 2016
John Moore	May 1, 2016
Rob Nairn	April 29, 2016
Luke Petrykowski	April 20, 2016[1]
Victor Phillips	November 15, 2016
Sean Ryan	October 6, 2016
Sonya Sahay	November 29, 2016
Eleanor Smith	October 9, 2016
Joanna Smith	May 18, 2016[1]
Sara Sutherland	September 6, 2016
Elaine Tracey	December 7, 2016
Barbara Young	February 17, 2016

1 The part-time Orders In Council of these three Vice-Chairs were revoked by the same Orders In Council that appointed them as full-time Vice-Chairs.

NEW APPOINTMENTS DURING 2016

	Effective
Paul Allen, part-time Vice-Chair	February 24, 2016
Rosemary Basa, part-time Vice-Chair	May 18, 2016
Beverley Burns, part-time Vice-Chair	November 28, 2016
Barbara Cappell, part-time Vice-Chair	February 24, 2016
David Corbett, Tribunal Chair	September 6, 2016
Helen Daniel, part-time Vice-Chair	November 2, 2016
Donald Hale, part-time Vice-Chair	January 15, 2016
Rhea Hoare, part-time Vice-Chair	October 26, 2016
Christina Huras, part-time Vice-Chair	February 10, 2016
Mary Lipton, part-time Member representative of employers	February 24, 2016
Donald McBey, part-time Vice-Chair	June 22, 2016
Theodore Nemetz, part-time Vice-Chair	June 30, 2016
Christopher Ramsay, part-time Vice-Chair	May 18, 2016
Catherine Roberts, part-time Vice-Chair	November 28, 2016
Stephen Roth, part-time Member representative of workers	February 24, 2016
Fern Sager, part-time Vice-Chair	November 16, 2016
Carissa Tanzola, part-time Vice-Chair	August 4, 2016
Mary Tzaferis, part-time Member representative of workers	December 7, 2016
Rebecca Woodrow, part-time Vice-Chair	June 22, 2016

SENIOR STAFF

Susan Adams	Tribunal Executive Director
Michelle Alton	Tribunal General Counsel
David Bestvater	Director, Information and Technology Services
Nicole Bisson	Director, Appeal Services
Wesley Lee	Manager, Financial Management & Controllership
Janet Oulton	Appeals Administrator
Carole Prest	Counsel to the Chair
Lynn Telalidis	Director, Human Resources and Administration

MEDICAL COUNSELLORS

Dr. John Duff, Chair of Medical Counsellors	General Surgery
Dr. Emmanuel Persad	Psychiatry
Dr. David Rowed	Neurosurgery
Dr. Marvin Tile	Orthopaedic Surgery
Dr. Anthony Weinberg	Internal Medicine

APPENDIX B

Deloitte.

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Vaughan ON L4K 0C3
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Independent Auditor's Report

To the Chair of the Workplace Safety and Insurance Appeals Tribunal

We have audited the accompanying financial statements of the Workplace Safety and Insurance Appeals Tribunal, which comprise the statement of financial position as at December 31, 2016, the statements of operations, changes in fund balances and cash flows for the year then ended, and a summary of significant accounting policies and other explanatory information.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with Canadian public sector accounting standards, and for such internal control as management determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with Canadian generally accepted auditing standards. Those standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion
In our opinion, the financial statements present fairly, in all material respects, the financial position of the Workplace Safety and Insurance Appeals Tribunal as at December 31, 2016, and the results of its operations and its cash flows for the year then ended in accordance with Canadian public sector accounting standards.

Deloitte LLP

Chartered Professional Accountants
Licensed Public Accountants
March 9, 2017

WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL

Statement of Financial Position

As at December 31, 2016

	2016	2015
ASSETS		
CURRENT		
Cash	**$ 2,784,444**	$ 2,853,607
Receivable from Workplace Safety and Insurance Board	**762,639**	1,109,467
Prepaid expenses and advances	**442,353**	404,734
Recoverable expenses (Note 3)	**180,541**	160,508
	4,169,977	4,528,316
CAPITAL ASSETS (Note 4)	**199,680**	101,867
	$ 4,369,657	$ 4,630,183
LIABILITIES		
CURRENT		
Accounts payable and accrued liabilities	**$ 1,960,620**	$ 2,724,848
Accrued severance benefits and vacation credits	**2,739,717**	3,389,797
Operating advance from Workplace Safety and Insurance Board (Note 5)	**1,800,000**	1,400,000
	6,500,337	7,514,645
FUND BALANCES		
OPERATING FUND (Note 6)	**(2,330,360)**	(2,986,329)
CAPITAL FUND	**199,680**	101,867
	(2,130,680)	(2,884,462)
	$ 4,369,657	$ 4,630,183

APPROVED ON BEHALF OF WORKPLACE
SAFETY AND INSURANCE APPEALS TRIBUNAL

..... Chair

WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL

Statement of Operations

Year ended December 31, 2016

	2016	2015
OPERATING EXPENSES		
Salaries and wages	$ 12,172,593	$ 11,297,079
Employee benefits (Note 7)	2,717,370	3,086,059
Transportation and communication	929,775	810,275
Services and supplies	8,339,609	7,371,508
Amortization	102,862	62,578
	24,262,209	22,627,499
Services - Workplace Safety and Insurance Board (WSIB) (Note 8)	539,884	505,203
TOTAL OPERATING EXPENSES	24,802,093	23,132,702
BANK INTEREST INCOME	(4,203)	(6,611)
NET OPERATING EXPENSES	24,797,890	23,126,091
FUNDS RECEIVED AND RECEIVABLE FROM WSIB	(25,551,672)	(23,101,367)
ANNUAL (SURPLUS) DEFICIT	$ (753,782)	$ 24,724

WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL

Statement of Changes in Fund Balances

Year ended December 31, 2016

	Capital	Operating	Total
BALANCE - January 1, 2015	$ 72,109	$ (2,931,847)	$ (2,859,738)
Additions to capital assets	92,336	-	92,336
Amortization of capital assets	(62,578)	-	(62,578)
Severance benefits, vacation credits, and Health Care Spending Account (Note a)	-	(87,093)	(87,093)
Prepaid expenses (Note b)	-	32,611	32,611
Annual deficit	29,758	(54,482)	(24,724)
BALANCE - DECEMBER 31, 2015	101,867	(2,986,329)	(2,884,462)
Additions to capital assets	200,675	-	200,675
Amortization of capital assets	(102,862)	-	(102,862)
Severance benefits, vacation credits, and Health Care Spending Account (Note a)	-	650,080	650,080
Prepaid expenses (Note b)	-	5,889	5,889
Annual Surplus	97,813	655,969	753,782
BALANCE - DECEMBER 31, 2016	199,680	(2,330,360)	(2,130,680)

Note a) Severance benefits, vacation credits, and Health Care Spending are not funded by WSIB until they are paid.

Note b) Prepaid expenses are funded by WSIB when paid and not when expensed.

WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL

Statement of Cash Flows

Year ended December 31, 2016

	2016	2015
NET (OUTFLOW) INFLOW OF CASH RELATED TO THE FOLLOWING ACTIVITIES		
OPERATING		
Funding revenue received from Workplace Safety and Insurance Board	$ 25,898,501	$ 23,118,032
Cash receipts for recoverable expenses	1,245,262	869,542
Bank interest received	4,203	6,611
Expenses, recoverable expenses net of amortization of $102,862 (2015 - $62,578)	(27,016,454)	(22,640,035)
	131,512	1,354,150
CAPITAL		
Acquisition of capital assets	(200,675)	(92,336)
NET (DECREASE) INCREASE IN CASH	(69,163)	1,261,814
CASH, BEGINNING OF YEAR	2,853,607	1,591,793
CASH, END OF YEAR	$ 2,784,444	$ 2,853,607

WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL

Notes to the Financial Statements

December 31, 2016

1. GENERAL

Workplace Safety and Insurance Appeals Tribunal (the "Tribunal") was originally created by the Workers' Compensation Amendment Act S.O. 1984, Chapter 58 - Section 32, which came into force on October 1, 1985. The Workplace Safety and Insurance Act (the "Act") replaced the Workers' Compensation Act in 1997 and came into force January 1, 1998. The Workplace Safety and Insurance Board ("WSIB"), (formerly, Workers' Compensation Board) is required to fund the cost of the Tribunal from the Insurance Fund. These reimbursements and funding amounts are determined and approved by the Ontario Minister of Labour.

The purpose of the Tribunal is to hear, determine and dispose of in a fair, impartial and independent manner, appeals by workers and employers in connection with decisions, orders or rulings of the WSIB and any matters or issues expressly conferred upon the Tribunal by the Act.

2. SIGNIFICANT ACCOUNTING POLICIES

The following summarizes the significant accounting policies used in preparing the accompanying financial statements:

Basis of presentation

The financial statements have been prepared in accordance with Canadian accounting standards for government not-for-profit organizations, including Sections PS 4200 to PS 4270 "PSAS-NPO" of the CPA Canada Public Sector Accounting Handbook using the restricted fund method of reporting revenue.

Revenue recognition

WSIB funds expenses as incurred, except for severance benefits and vacation credits, which are funded when paid, and prepaid expenses which are funded when paid and not when expensed.

Accounting estimates

The preparation of financial statements requires management to make estimates and assumptions that affect the reported amounts in the financial statements and in the accompanying notes. Due to the inherent uncertainty in making estimates, actual results could differ from these estimates. Accounts requiring estimates and assumptions are included in accrued severance benefits and vacation credits.

Capital assets

Capital assets are recorded at cost and are amortized on a straight-line basis over their estimated useful life of 4 years.

Funding for capital assets provided by the WSIB is reported in the Capital Fund. The Fund is reduced each year by an amount equal to the amortization of capital assets and increased by the additions to capital assets.

WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL
Notes to the Financial Statements
December 31, 2016

2. SIGNIFICANT ACCOUNTING POLICIES (continued)

Employee benefits

(a) Pension benefits

The Tribunal provides pension benefits for all of its permanent employees (and to non-permanent employees who elect to participate) through the Public Service Pension Plan ("PSPP") and the Ontario Public Service Employees' Union Pension Fund (OPSEU Pension Trust) which are both multi-employer plans established by the Province of Ontario. The plans are defined-benefit plans, which specify the amount of retirement benefit to be received by employees based on their length of service and rates of pay.

(b) Severance benefits

Severance benefits are recognized and accrued over the years in which employees earn the benefits. The severance benefit is recorded once an employee has worked for the Tribunal for a minimum term (of five years). The maximum amount payable to an employee shall not exceed one-half of the annual full-time salary. A unionized employee who retires or voluntarily resigns is entitled to severance benefits for service accrued up to June 30, 2010. A non-union employee who retires, and is eligible for a PSPP is entitled to severance benefits for service accrued up to December 31, 2015. A non-union employee who voluntarily resigns is only entitled to severance benefits for service accrued up to December 31, 2011.

(c) Vacation credits

Vacation entitlements are accrued in the year when vacation credits are earned. Employees may accumulate vacation credits to a maximum of one year's vacation entitlement at December 31 of each year. Senior Management Group is also eligible to time bank up to ten vacation days per year (maximum of one hundred and twenty five days). Employees are paid for any earned and unused vacation credits at the date they cease to be an employee.

(d) Non-pension future benefits

The Tribunal also provides for dental, basic life insurance, supplementary health and hospital benefits to retired employees through a self-insured, unfunded defined benefit plan established by the Province of Ontario.

The Tribunal does not accrue for non-pension future benefits liability since the information is not readily available from the Province of Ontario.

(e) Health Care Spending Account ("HCSA")

Consistent with the Province of Ontario's employee benefit plan, the Tribunal also introduced an annual health care spending component for every eligible employee in 2015. Any unused amounts in the current year can be carried forward for up to one year.

WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL
Notes to the Financial Statements
December 31, 2016

3. RECOVERABLE EXPENSES

Recoverable expenses consist of amounts recoverable for shared services, secondments and other miscellaneous receivables.

	2016	2015
Shared services		
Ontario Labour Relations Board	**$91,080**	$ 83,624
Pay Equity Hearings Tribunal	**6,117**	5,609
Secondments		
Office of the Worker/Employer Adviser	**11,876**	9,486
Others		
Canada Revenue Agency HST rebate receivable	**70,226**	56,648
Employee amounts receivable	**-**	5,065
Miscellaneous	**1,242**	76
Total	**$180,541**	$ 160,508

4. CAPITAL ASSETS

	Cost	Accumulated Amortization	2016 Net Book Value	2015 Net Book Value
Leasehold Improvements	$ **3,267,499**	$ **3,123,931**	$ **143,568**	$ 17,175
Furniture and Equipment	**704,012**	**661,679**	**42,333**	67,703
Computer Equipment and Software	**412,935**	**399,156**	**13,779**	16,989
	$ **4,384,446**	$ **4,184,766**	$ **199,680**	$ 101,867

5. OPERATING ADVANCE FROM WSIB

The operating advance is interest-free with no specific terms of repayment. This amount was increased by $400,000 in 2016 to reflect the higher monthly expenditures.

6. OPERATING FUND

The Operating Fund deficit of $2,330,360 as of December 31, 2016 (2015 - $2,986,329) represents future obligations to employees for severance, vacation credits and health care spending account credits, less prepaid expenses. Funding for these future obligations will be provided by WSIB in the year the actual payment is made.

WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL
Notes to the Financial Statements
December 31, 2016

7. EMPLOYEE BENEFITS OBLIGATIONS

a) Pension plan costs

Contributions by the Tribunal on account of pension costs amounted to $967,286 (2015 - $897,917) and are included in employee benefits in the Statement of Operations.

b) Severance benefits

Severance benefits are recognized and accrued over the years in which employees earn the benefits. The net severance benefits accrued in 2016 amounted to a decrease of $753,947 (2015 – decrease of $24,298) over the prior year amount and is included in employee benefits in the Statement of Operations.

c) Vacation credit entitlement

Vacation entitlements are accrued in the year when vacation credits are earned. The net vacation credits accrued in 2016 amounted to an increase in the accrual of $46,205 (2015 - $39,744) over the prior year amount and is included in employee benefits in the Statement of Operations.

d) Non-pension future benefits

The Tribunal does not accrue for non-pension future benefits, since the information is not readily available from the Province of Ontario.

e) Health Care Spending Account (HCSA)

Eligible employees are entitled to an annual health care spending account as part of the changes in 2015 to the health benefits. Unused amounts can be carried forward for up to one year. The net HCSA accrued in 2016 amounted to an increase of $57,662 (2015 - $71,647) over the prior year and is included in employee benefits in the Statement of Operations.

f) Prior year CPP & EI Contribution

In 2016, the Tribunal paid to Canada Revenue Agency ("CRA"), an amount of $40,825 (2015 - $453,182) for CPP & EI contributions (employer and employee shares) for the years 2010-2014 for a small group of part-time Order-in-Council appointees. This resulted from an assessment by CRA that determined remuneration paid to Order-in-Councils (OIC) is considered pensionable or insurable employment income for these years. This amount is included in employee benefits in the Statement of Operations.

8. SERVICES – WSIB

The expense represents administrative costs for processing claim files of the WSIB, which are under appeal at the Tribunal, pursuant to section 125 (4) of The Workplace Safety and Insurance Act, 1997.

WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL
Notes to the Financial Statements
December 31, 2016

9. COMMITMENTS

The Tribunal has commitments under several leases and maintenance contracts relating to computer and office equipment, software license fees and workplace learning solutions service contracts with terms from 1-4 years. The minimum payments under these commitments are as follows:

2017	$ 244,427
2018	167,639
2019	18,688
2020	15,850
Minimum payments	$ 446,604

The Tribunal is also committed to minimum lease payments for premises, including building operating costs. The minimum lease payments for the next five years are as follows:

2017	$ 1,650,899
2018	1,650,899
2019	1,650,899
2020	1,650,899
2021 and thereafter	1,650,899
Minimum operating lease payments	$ 8,254,495

The current lease was renewed for ten years commencing November 1, 2015 with two further options to extend the lease for 5 years each.

10. CONTINGENT LIABILITIES

The CRA completed a review of remuneration paid by the Tribunal to a select number of Part-time Order-in-Council appointees ("OICs") for the years 2010-2014 and determined that the remuneration paid is considered pensionable or insurable employment income and issued assessments to the Tribunal for CPP & EI contributions (employer and employee shares) for these years. The Tribunal has appealed the EI ruling and has not received a decision. The assessments were paid (see Note 7f) to prevent further accumulation of interest.

The impact to other OICs is unknown. As at December 31, 2016, no provision has been made in these financial statements for any liability that may result. Any loss resulting from these claims will be recognized in the year when it becomes known.